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Part 1

Interlocal Agreements

7-11-101. Short title. This part shall be known and cited as the "Interlocal Cooperation Act".

History: **En. Sec. 2, Ch. 82, L. 1967; R.C.M. 1947, 16-4902.**

7-11-102. Purpose. It is the purpose of this part to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

History: En. Sec. 1, Ch. 82, L. 1967; R.C.M. 1947, 16-4901.

7-11-103. Definition. For the purposes of this part, the term "public agency" shall mean any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

History: En. Sec. 3, Ch. 82, L. 1967; R.C.M. 1947, 16-4903.

7-11-104. Authorization to create interlocal agreements. Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform. Such contract shall be authorized and approved by the governing body of each party to said contract. Such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(part).

7-11-105. Detailed contents of interlocal agreements. The contract authorized by 7-11-104 shall specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created thereby;

(3) the purpose or purposes of said interlocal contract;

(4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget therefor;

(5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on said joint board;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

(8) any other necessary and proper matters.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(1) thru (8).

7-11-106. Submission of agreement to attorney general. (1) Every agreement made hereunder shall, prior to and as a condition precedent to its performance, be submitted to the attorney general, who shall determine whether the agreement is in proper form and compatible with the laws of Montana.

(2) The attorney general shall approve any agreement submitted to him hereunder unless he shall find it does not meet the conditions set forth herein and shall detail, in writing addressed to the governing bodies of the

public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 30 days of its submission shall constitute approval thereof.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(9).

7-11-107. Filing of interlocal agreement. Within 10 days after the approval by the attorney general and prior to commencement of its performance, said interlocal contract made pursuant to this part shall be filed with:

(1) the county clerk and recorder of the county or counties where said political agencies are situated; and

(2) the secretary of state.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(10).

7-11-108. Authorization to appropriate funds for purpose of interlocal agreement. Any public agency entering into an interlocal contract pursuant to this part may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative board created for the purpose of performance of said contract and may provide such personnel or services therefor as may be within its legal power to furnish.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(11).

Part 2

Interlocal Cooperation Commission

7-11-201. Statement of policy. It is hereby declared to be the public policy of Montana to provide for the residents of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

History: En. Sec. 1, Ch. 129, L. 1969; R.C.M. 1947, 11-4401(1).

7-11-202. Purpose. It is the purpose of this part to provide a method whereby the residents of local areas in Montana may propose local solutions to the common problems referred to in 7-11-201 in order that proper growth and development of the state may be assured and the health and welfare of the people therein secured.

History: En. Sec. 1, Ch. 129, L. 1969; R.C.M. 1947, 11-4401(2).

7-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means an interlocal cooperation commission established pursuant to 7-11-204.

(2) "Principal city" means the city having the largest population in the county under consideration according to the latest federal decennial census.

(3) "Unit of local government" means a county, city, or town.

History: En. Sec. 2, Ch. 129, L. 1969; R.C.M. 1947, 11-4402.

7-11-204. Authorization for establishment of interlocal cooperation commissions. An interlocal cooperation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal cooperation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities, and towns having any jurisdiction in the county under consideration. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the clerk and recorder of the county, and an interlocal cooperation commission shall be deemed to be authorized.

(2) (a) A petition requesting the establishment of an interlocal cooperation commission shall be signed by at least 10% of the qualified voters within the county registered for the preceding general election and shall be filed with the clerk and recorder of the county.

(b) Upon receipt of such a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures thereon. Within 30 days following receipt of such petition, the clerk and recorder shall transmit the same to the board of county commissioners and to the governing bodies of all cities and towns having any jurisdiction in the county, together with his certificate as to the sufficiency thereof, and an interlocal cooperation commission shall be deemed to be authorized.

History: En. Sec. 3, Ch. 129, L. 1969; R.C.M. 1947, 11-4403(part).

7-11-205. Limitation on number of interlocal cooperation commissions. Only one commission may be established in a county at any one time.

History: En. Sec. 3, Ch. 129, L. 1969; R.C.M. 1947, 11-4403(part).

7-11-206. Term of commission. All commissions shall terminate 5 years from the date of their establishment. However, a commission, upon completion of its duties, may terminate earlier by a vote (favorable to such earlier termination) of three-fourths of the members.

History: En. Sec. 16, Ch. 129, L. 1969; amd. Sec. 2, Ch. 70, L. 1971; R.C.M. 1947, 11-4416.

7-11-207. Composition of commission. Any interlocal cooperation commission established pursuant to this part shall consist of members to be selected as follows:

(1) four members selected by the county commissioners;

(2) four members appointed by the mayor of the principal city and confirmed by the governing body of the city;

(3) one member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town;

(4) one member, who shall be chairman of the interlocal cooperation commission, selected by the other members of the commission at their initial meeting.

History: En. Sec. 4, Ch. 129, L. 1969; R.C.M. 1947, 11-4404(1).

7-11-208. Qualifications of members of commission. (1) Each member shall reside, at the time of his appointment, within the county if selected by the board of county commissioners or within the city or town by which appointed.

(2) No member shall be an official or employee of any unit of local government.

History: En. Sec. 4, Ch. 129, L. 1969; R.C.M. 1947, 11-4404(2), (3).

7-11-209. Time of appointment. The members of the interlocal cooperation commission shall be appointed within 60 days after the commission is authorized.

History: En. Sec. 5, Ch. 129, L. 1969; R.C.M. 1947, 11-4405.

7-11-210. Vacancies. In case of a vacancy for any cause, a new member shall be appointed in the same manner as the member he replaces.

History: En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(1).

7-11-211. Compensation for members of commission. Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

History: En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(2).

7-11-212. Organization of commission — meetings. (1) Not later than 80 days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners.

(2) At the first meeting of the commission, one of the members appointed by the board of county commissioners shall be designated by that body to serve as temporary chairman. As its first official act, the commission shall select a chairman from outside its own membership.

(3) Further meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the members of the commission.

History: En. Sec. 6, Ch. 129, L. 1969; R.C.M. 1947, 11-4406.

7-11-213. Conduct of business. (1) All meetings of the commission shall be open to the public.

(2) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(3) Each member shall have one vote. A favorable vote by a majority of the entire commission shall be necessary for any action permitted by 7-11-230, but other actions may be by a majority of those present and voting.

(4) Each commission may adopt such other rules for its proceedings as it deems desirable.

History: En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(3) thru (5).

7-11-214 through 7-11-220 reserved.

7-11-221. Powers and duties of commission. A commission shall have the following powers and duties:

(1) to contract and cooperate with other public or private agencies, as it considers necessary for the rendition and affording of such services, facilities, studies, and reports to the commission as will best assist it to carry out the purposes for which the commission was established;

(2) to consult and retain such experts and to employ such executive, clerical, and other staff as, in the commission's judgment, may be necessary;

(3) to accept and expend money from any public or private source, including the federal government;

(4) to do any and all other things as are consistent with and reasonably required to perform its functions under this part.

History: En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).

7-11-222. Management of commission finances. All money received by the commission shall be deposited with the county treasurer in the county. The county treasurer is authorized to disburse funds of the commission on its order.

History: En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).

7-11-223. Authorization to make appropriations for commission. The units of local government within the county under consideration and the county may appropriate funds for the necessary expenses of the commission.

History: En. Sec. 15, Ch. 129, L. 1969; R.C.M. 1947, 11-4415.

7-11-224. Preparation of comprehensive program. (1) The commission shall prepare a comprehensive program for the furnishing of local governmental services, on both countywide and urban area bases, as it deems desirable.

(2) Within 3 years after the date of its organization, the commission shall complete the preparation of its proposals for the provision of both urban area services and countywide services and shall provide for adequate publication and explanation of its program.

History: (1)En. Sec. 9, Ch. 129, L. 1969; Sec. 11-4409, R.C.M. 1947; (2)En. Sec. 12, Ch. 129, L. 1969; amd. Sec. 1, Ch. 70, L. 1971; Sec. 11-4412, R.C.M. 1947; R.C.M. 1947, 11-4409, 11-4412(part).

7-11-225. Considerations in preparation of proposals. (1) A commission shall consider the various areas included within the county, including areas incorporated as municipalities, unincorporated areas essentially urban in nature, unincorporated areas with both urban and rural characteristics, and predominantly rural areas.

(2) In the formation of its proposals, which can include arrangements for countywide governmental services and urban area services in both incorporated and unincorporated areas, a commission shall study and take into consideration:

(a) the existing land use within the county, including the location of highways and natural geographic barriers to and routes for transportation, making use wherever possible of comprehensive land use plans prepared for the area by organized planning boards or other reliable surveys;

(b) the need for organized local governmental services, the present cost and adequacy of local governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of alternative courses of action on the cost and adequacy of services and controls in the areas concerned and in adjacent areas;

(c) population density, distribution, and growth; per capita assessed valuation; and the likelihood of significant growth in the areas concerned and in adjacent incorporated and unincorporated areas;

(d) the boundaries of existing units of local government;

(e) maintenance of citizen access to, control of, and participation in local government;

(f) such other matters as might affect provision of local governmental services on an equitable basis and provide more efficient and economical administration thereof.

History: **En. Sec. 8, Ch. 129, L. 1969; R.C.M. 1947, 11-4408.**

7-11-226. Consideration of property and debts. The commission shall:

(1) determine the value and amount of all property used in performing any local governmental service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for both urban area services and countywide services; and

(2) determine and provide in its proposed program for assumption or equitable adjustment of such property and debts of each unit of local government affected.

History: **En. Sec. 11, Ch. 129, L. 1969; R.C.M. 1947, 11-4411.**

7-11-227. Furnishing of information to commission. Upon request of the chairman of the commission, all state agencies, all counties and other units of local government, and the officers and employees thereof shall furnish the commission such information as may be necessary for carrying out its functions and which may be available to or procurable by such agencies or units of government.

History: **En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).**

7-11-228. Public hearings on proposed program — notice. Notice of hearings shall be published once each week for at least 2 weeks preceding a hearing, in at least one newspaper of general circulation in the county. The notice shall state the time and place of the hearing.

History: **En. Sec. 12, Ch. 129, L. 1969; amd. Sec. 1, Ch. 70, L. 1971; R.C.M. 1947, 11-4412(part).**

7-11-229. Recommendations to implement program. In preparing its comprehensive program for furnishing local governmental services, a commission may recommend one or more of the following courses of action:

(1) performance of one or more services by any existing unit of local government;

(2) consolidation of specified services by transfer of functions between local units of government, by creation of joint administrative agencies, or by contractual agreements;

(3) consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(4) creation of a new special service district to perform one or more services, with provision for the dissolution of any existing special service districts performing like service or services within the proposed boundaries of such new district;

(5) annexation of unincorporated territory to any existing city or town;

(6) consolidation of any existing cities and towns with any other existing cities and towns;

(7) consolidation of any cities and towns with the county in which they lie;

(8) creation of a permanent council of governments consisting of members of the governing bodies of the units of local government within and including the county concerned;

(9) creation of a unified government for the entire county, vested with:

(a) any and all powers which cities are or may hereafter be authorized or required to exercise under the constitution and general laws of Montana; and

(b) any and all powers which counties are or may hereafter be authorized or required to exercise under the constitution and general laws of Montana;

(10) any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the county under consideration or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of Montana.

History: En. Sec. 10, Ch. 129, L. 1969; R.C.M. 1947, 11-4410.

7-11-230. Procedure for making recommendations. After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of or any change, alteration, consolidation, dissolution, or annexation with respect to any unit of local government or special district a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes any change, alteration, interlocal agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(3) If the comprehensive plan includes the creation of or any change, alteration, consolidation, dissolution, or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of Montana, the commission shall make such recommendation or recommendations to the ensuing legislature.

History: En. Sec. 13, Ch. 129, L. 1969; R.C.M. 1947, 11-4413.

CHAPTER 12

IMPROVEMENT DISTRICTS

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Part 43 — Special Provisions for Special Improvement Lighting Districts

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Part 44 — Special Provisions for Street Sprinkling Districts

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7-12-4503. Protest to abandonment of district.
7-12-4504. Responsibility and liability of property owners following abandonment of district.

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Part 21

Rural Improvement Districts

7-12-2101. Definitions. (1) The term "board of county commissioners" includes any body or board which under the law is the legislative department of the government of the county.

(2) The word "blocks", shall mean such blocks, whether regular or irregular, as are bounded by main streets or partially by a boundary line of the city.

(3) The word "city" and the word "municipality", as used in this part, shall be understood and so construed as to include all corporations heretofore organized and now existing and hereafter organized for municipal purposes.

(4) The terms "clerk" and "county clerk", as used in this part, include any person or officer who shall be clerk of the board of county commissioners.

(5) The term "county treasurer", as used in this part, means and includes any person who, under whatever name or title, is the custodian of the funds of the county.

(6) The term "engineer", designated in the petition as used in this part, means the person, firm, or corporation whose name is designated and approved by the board of county commissioners as the engineer in the original petition asking for the improvement.

(7) The term "incidental expenses", as used in this part, shall include the compensation of the engineer selected as hereinbefore provided for work done by him, the cost of printing and advertising, as provided in this part, the expenses of making the assessment for any work authorized by this part.

(8) The term "main street" means such actually opened street or streets as bound a block.

(9) The words "paved" or "repaved", as used in this part, shall be held to mean and include pavement of stone, whether paving blocks or macadam;

of bituminous rock or asphalt; or of wood, brick, or other material, whether patented or not, which the board of county commissioners by rule or resolution shall adopt.

(10) The term "quarter block", as used in this part as to irregular blocks, includes all lots or portions of lots having any frontage on either intersecting street halfway from such intersection to the next main street or when no main street intervenes, all the way to the boundary line of any city.

(11) The word "street", as used in this part, includes avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years next preceding.

(12) The term "street intersection", wherever used in this part, means that parcel of land at the point of juncture or crossing of intersecting streets, which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

(13) The words "work", "improved", and "improvements", as used in this part, shall include all work or the securing of property, by purchase or otherwise, mentioned in this part and also the construction, reconstruction, maintenance, and repair of all or any portion of said work.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part).

7-12-2102. Authorization to create rural improvement districts upon petition. Whenever the public interest or convenience may require and upon the petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks, and such other special improvements as may be petitioned for.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1929; re-en. Sec. 4574, R.c.M. 1935; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969; R.C.M. 1947, 16-1601(part).

7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate the number of such district, describe the boundaries thereof, state therein the general character of the improvements which are to be made, and designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R.C.M. 1921; re-en. Sec. 4575, R.C.M. 1935; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969; R.C.M. 1947, 16-1602(part).

7-12-2104. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the assessment district or both and to refer to the resolution of intention for further particulars.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 6, Ch. 147, L. 1921; re-en. Sec. 4579, R.C.M. 1921; re-en. Sec. 4579, R.C.M. 1935; R.C.M. 1947, 16-1606.

7-12-2105. Notice of resolution of intention to create district — hearing. (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners must give notice of the passage of such resolution of intention.

(2) The notice must be published for 10 consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created. The board shall also cause a copy of such notice to be posted in three public places within the boundaries of such special improvement district. A copy of such notice shall be mailed to every person, firm, or corporation or the agent of such person, firm, or corporation owning real property within the proposed district listed in his name upon the last completed assessment roll for state, county, and school district taxes, at his last known place of residence, upon the same day such notice is first published or posted.

(3) Such notice must describe the general character of the improvement or improvements so proposed to be made or acquired by purchase, state the estimated cost thereof, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of such improvements or the creation of such district. The notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R.C.M. 1921; re-en. Sec. 4575, R.C.M. 1935; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969; R.C.M. 1947, 16-1602(part).

7-12-2106. General provisions related to notice. (1) The notices, resolutions, orders, or other matters required to be published by the provisions of this part shall be published in a daily, semiweekly, or weekly newspaper, to be designated by the board of county commissioners, as often as the same is issued during the period specified for publication, and no other statute is applicable to publications herein provided for. In case there is no daily, semiweekly, or weekly newspaper printed or circulated in a county, then those notices, resolutions, orders, or other matters as are herein required to be published in a newspaper shall be posted, for the same length of time as required herein for publication in a daily, semiweekly, or weekly newspaper, in three of the most public places in each voting precinct except as otherwise specifically provided herein.

(2) Proof of the publication or posting of any notice is made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the poster of the notice.

(3) No publication of notice other than that provided for in this part is necessary to give validity to any of the proceedings provided therein.

(4) The word "twice", as used in this part, referring to the number of times notices, resolutions, orders, or other matters shall be published, means publication of the same in two entire issues of the newspaper, one being on one day and the other issue being on a subsequent day of the same or subsequent week.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(4); amd. Sec. 1, Ch. 251, L. 1979.

7-12-2107. Responsibility for posting and publication of notice. (1) Whenever any resolution, order, notice, or determination is required to be published or posted and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer in the county, it shall be the duty of the county clerk to post or procure the publication or posting thereof, as the case may be.

(2) No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or determination hereunder when the same is actually published or posted for the time herein required.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 28, Ch. 147, L. 1921; re-en. Sec. 4601, R.C.M. 1921; re-en. Sec. 4601, R.C.M. 1935; R.C.M. 1947, 16-1628.

7-12-2108. Extension of proposed district. Whenever a contemplated work or improvement, in the opinion of the board of county commissioners, is of more than local or ordinary public benefit or whenever, according to the estimates furnished by the county surveyor or an engineer approved by the board and designated in the petition, the total estimated cost and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed (if assessed upon the lots and lands fronting upon such proposed work or improvement according to the valuation fixed by the last assessment roll whereon it was assessed for taxes), the board may make the expense of such work chargeable upon the extended district, which may include other lots and lands not fronting on the improvement and which the board shall declare, in its resolution of intention, to be the district benefited by said work or improvement and to be assessed to pay the cost and expense thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 3, Ch. 147, L. 1921; re-en. Sec. 4576, R.C.M. 1921; re-en. Sec. 4576, R.C.M. 1935; R.C.M. 1947, 16-1603.

7-12-2109. Right to protest creation or extension of district. At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of its receipt by him.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part).

7-12-2110. Who considered owner. (1) The person owning the fee; the person to whom, on the day the action is commenced, appears the legal title to the lot and lands by deed duly recorded in the county recorder's office in each county; or the person in possession of lands, lots or portions of lots, or buildings under claim or exercising acts of ownership over the same for himself or as the executor, administrator, or guardian of the owner shall be regarded, treated, and deemed to be the "owner" for the purpose of this part, according to the intent and meaning of that word as used in this part.

(2) In case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed the possession of such owner.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(1).

7-12-2111. Hearing on protest. (1) At the next regular meeting of the board of county commissioners after the expiration of the time within which protest may be made, the board shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive. The board may adjourn said hearing from time to time.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the county shall be considered the same as other property in the district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part).

7-12-2112. Sufficient protest to bar proceedings — exception. (1) Except as provided in subsection (2), no further proceedings shall be taken for a period of 6 months from the date when said protest was received by the county clerk when:

(a) the protest is against the proposed work and the cost thereof is to be assessed upon the property fronting thereon and the board of county commissioners finds that such protest is made by the owners of more than 50% of the area fronting on the proposed work; or

(b) the protest is against the proposed work and the cost thereof is to be assessed upon the property within the extended district and the board finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for such improvements.

(2) In case the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part).

7-12-2113. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the special improvement district in accordance with the resolution of intention theretofore introduced and passed by the board.

(2) The board shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of the following conditions:

(a) when no protests have been delivered to the county clerk within 15 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest shall have been found by said board to be insufficient or shall have been overruled; or

(c) when a protest against the extending of the proposed district shall have been heard and denied.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 5, Ch. 147, L. 1921; re-en. Sec. 4578, R.C.M. 1921; re-en. Sec. 4578, R.C.M. 1935; R.C.M. 1947, 16-1605.**

7-12-2114. Area includable within district. A rural improvement district, as authorized by 7-12-2102, may include a part or all of any county or may include areas in more than one county.

History: **En. Sec. 1, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.1.**

7-12-2115. Adjournment of hearing. Whenever in proceedings hereunder a time and place for hearing by the board of county commissioners is fixed and from any cause, the hearing is not then and there held or regularly adjourned to a fixed time and place, the power and jurisdiction of the board in the premises shall not be thereby divested or lost, but the board may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least 5 days before the date of the hearing. Thereupon the board shall have power to act as in the first instance.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 27, Ch. 147, L. 1921; re-en. Sec. 4600, R.C.M. 1921; re-en. Sec. 4600, R.C.M. 1935; R.C.M. 1947, 16-1627.**

7-12-2116. County surveyor as improvement district engineer. The county surveyor may be the engineer, as defined in 7-12-2101(6), for a rural improvement district.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part).**

7-12-2117. Record of expenses to be kept by engineer. It shall be the duty of the engineer selected as hereinbefore provided to keep an account in his office of all costs and expenses incurred in connection with every special improvement district and to certify the same to the county clerk.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part).**

7-12-2118. Role of county clerk. It shall be the duty of the county clerk to prepare all necessary schedules and resolutions levying the taxes and assessments in such special improvement district.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part).**

7-12-2119. Manner of making demands for incidental expenses. All demands for incidental expenses in 7-12-2101(7) shall be presented to the county clerk by itemized bill, duly verified by oath of the demandant.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part).

7-12-2120. Maintenance of improvements. (1) Whenever any sanitary or storm sewers, lights or light systems, waterworks plants, water systems, sidewalks, or any other special improvements petitioned for or created by the state or federal government have been made, built, constructed, erected, or accomplished as provided in this part, it is hereby made the duty of the board of county commissioners under whose jurisdiction the district was created or supervised or directed to adequately and suitably maintain and preserve said improvements and to fully keep the same in proper repair and operation, by contract or otherwise, in such way or manner as the board shall deem suitable and proper.

(2) The whole cost of maintaining, preserving, and repairing of said improvements in any improvement district shall be paid by assessing the entire district in the method provided for by 7-12-2108.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(1).

7-12-2121. Administration of multicounty district. (1) If a rural improvement district includes areas in more than one county, the board of county commissioners of each county in which any portion of the district is situated shall, upon creation of the district and at a joint session, appoint an initial board of three trustees to administer the affairs of the district.

(2) At the end of the term of a trustee, the board of county commissioners of the county represented by the trustee shall appoint a new trustee. In case of a vacancy by death, resignation, removal from the district, or otherwise, a trustee shall be appointed by the board of county commissioners of the county represented by the trustee to fill the vacancy.

(3) At least one trustee shall be appointed from each county within the district.

History: En. Secs. 2, 3, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.2, 16-1605.3(part); amd. Sec. 2, Ch. 251, L. 1979.

7-12-2122. Term of office of multicounty district trustee. (1) The trustees appointed upon the creation of such district shall serve staggered terms of 1, 2, and 3 years. Thereafter, each trustee serves a term of 3 years.

(2) A trustee holds office for the term of his appointment or until his successor is appointed and qualified.

History: En. Sec. 3, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.3(part); amd. Sec. 3, Ch. 251, L. 1979.

7-12-2123. Powers of multicounty district board of trustees. The board of trustees of a rural improvement district shall have all the powers and duties with respect to such district as the board of county commissioners has with respect to a district including the area of only one county.

History: En. Sec. 4, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.4.

7-12-2124 through 7-12-2130 reserved.

7-12-2131. Bids for district work. (1) The board of county commissioners may call for bids for proposals for several kinds or types of materials for any of the improvements proposed, reserving the right to select the kind of type or materials to be used in making any or all of said improvements after the bids or proposals therefor shall have been opened, examined, and declared.

(2) All proposals or bids offered shall be accompanied by bid security as provided for in Title 18, chapter 1, part 2. Such proposals or bids shall be delivered to the county clerk.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

7-12-2132. Advertising for bids. A notice inviting proposals and referring to specifications on file with the engineer selected as hereinbefore provided shall be published at least twice in a daily, semiweekly, or weekly newspaper published and circulated nearest to the boundaries of the proposed improvement district. The paper shall be designated by the board of county commissioners for that purpose. A copy of said notice shall be posted in at least three public places within the boundaries of the proposed district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(1).

7-12-2133. Competitive bidding not required for purchase of existing improvement. If the proposed improvement consists of the purchase of an existing improvement, the board of county commissioners may in their discretion, after the creation of the special improvement district and after ordering the proposed improvement, enter into a contract for the purchase of said improvement, upon such terms as they deem just, without advertising for bids or proposals; provided, however, that the total purchase price shall not exceed the amount set forth in the notice required by 7-12-2105.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(6).

7-12-2134. Opening of bids. (1) The board of county commissioners shall, in open session, publicly open and examine and declare the bids.

(2) The time fixed for the opening of the bids shall not be less than 15 days from the time of the final publication of the notice required by 7-12-2132.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

7-12-2135. Decision on award of contract. (1) The board of county commissioners may award the contract for such work or improvement to the lowest responsible bidder at the prices named in his bid and shall reject all proposals other than the lowest regular proposal or bid of any responsible bidder.

(2) The board:

(a) may reject any and all proposals or bids should it deem this for the public good;

(b) may also reject the bid of any party who has been delinquent or unfaithful in any former contract with the board.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(4).

7-12-2136. Procedure if all bids rejected or no bids received. If the bids are rejected or no bids are received, the board of county commissioners may within 6 months thereafter readvertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner provided in 7-12-2131 through 7-12-2137.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

7-12-2137. Procedure for dealing with bid securities. (1) If bids are rejected, the board of county commissioners shall thereupon return to the proper parties the bid securities accompanying the bids so rejected.

(2) The bid security accompanying said accepted proposal or bid shall be held by the county clerk until the contract for doing said work, as hereinafter provided, has been entered into, either by the lowest bidder or by the owners of over 50% of frontage, whereupon said bid security shall be returned to said bidder.

(3) If said bidder fails, neglects, or refuses to enter into the contract to perform said work and improvements as hereinafter provided, then the bid security accompanying his bid, in the amount therein mentioned, shall be declared to be forfeited to the board and shall be collected by it and paid into the general fund of the county.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

7-12-2138. Contractor's bond for successful completion of work. All contractors and contracting owners included shall, at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, in the form and manner provided for in Title 18, chapter 2, part 2.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 9, Ch. 147, L. 1921; re-en. Sec. 4582, R.C.M. 1921; re-en. Sec. 4582, R.C.M. 1935; amd. Sec. 4, Ch. 220, L. 1975; R.C.M. 1947, 16-1609.

7-12-2139. Procedure if person entering contract defaults on work. (1) If the contractor who may have taken any contract does not complete the same within the time limited in the contract or within such further time as may be given him, the engineer selected as hereinbefore provided shall report such delinquency to the board of county commissioners.

(2) (a) The board may relet the unfinished portion of said work after pursuing the formalities prescribed in 7-12-2131 through 7-12-2137 for the letting of the whole in the first instance.

(b) The board shall have the right, in its option, to complete the contract and deduct any cost in excess of the contract price thereof from any money, bond, or warrant due such contractor. In the event there is no money, bond, or warrant due such contractor from which to deduct such cost, then the board shall have the right to sue such contractor and recover from him such costs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 8, Ch. 147, L. 1921; re-en. Sec. 4581, R.C.M. 1921; re-en. Sec. 4581, R.C.M. 1935; R.C.M. 1947, 16-1608.

7-12-2140. Procedure for objection to proceedings. (1) At any time within 60 days from the date of the awarding of a contract, any owner or other person having any interest in any lot, tract, or plot of land liable to assessment who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous, or faulty or that his property will be damaged by the making of any of the improvements in the manner contemplated may file with the county clerk a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent his property will be damaged by the making of said improvements.

(2) Said notice shall state that it is made in pursuance of this section.

(3) All objections in any act or proceeding or in relation to the making of said improvements must be made in writing and in the manner and at the time aforesaid. All claims for damages therefor shall be waived by such property owner in case no written objection is filed by him, provided that notice of the passage of the resolution of intention has been actually published and the notice of improvements posted as provided in this part.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 10, Ch. 147, L. 1921; re-en. Sec. 4583, R.C.M. 1921; re-en. Sec. 4583, R.C.M. 1935; R.C.M. 1947, 16-1610.

7-12-2141 through 7-12-2150 reserved.

7-12-2151. Assessment of costs. To defray the cost of making any of the improvements provided for in this part, the board of county commissioners shall adopt the following method of assessment:

(1) The board shall assess the entire cost of such improvements against the entire district. Each lot or parcel of land assessed in such district shall be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) Where said rural improvement district is located more than 5 miles from the boundary of an incorporated city or town, said assessment may, at the option of the board, be based upon the assessed value of the lots or pieces of land within said district.

(3) The board in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd.

Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(part).

7-12-2152. Exception for owners of water ditches under certain circumstances. The owner or owners of open ditches carrying irrigation or other water shall not be included in any rural improvement district under this part for the purpose of assessment to support the rural improvement district for the installation, repair, or maintenance of any protective devices referred to in 7-12-2102. Such devices or improvements shall provide access to and shall not be constructed so as to hinder the operation and maintenance of the ditch.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1929; re-en. Sec. 4574, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969; R.C.M. 1947, 16-1601(part).

7-12-2153. Incidental expenses considered as cost of improvements. The cost and expense connected with and incidental to the formation of any special improvement district, including the cost of preparation of plans, specifications, maps, or plats; engineering, superintendence, and inspection; and preparation of assessment rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part).

7-12-2154. Payment of damages incurred as a result of improvements. Whenever the owner or anyone interested in any property situated in the special improvement district, after filing with the county clerk a written notice claiming that his property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of any improvement in the special improvement district:

(1) before the resolution levying the assessment to defray the cost of making the improvement in the district is passed and adopted by the board of county commissioners, the amount ordered to be recovered shall be added to and constitute a part of making the improvements; but

(2) if the resolution levying the assessment to defray the cost and expenses of making the improvement has been passed and adopted by the board, it shall pass and adopt a supplemental resolution levying an additional assessment against the property in the district for the purpose of paying the amount awarded and the supplemental resolution shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvements.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 15, Ch. 147, L. 1921; re-en. Sec. 4588, R.C.M. 1921; re-en. Sec. 4588, R.C.M. 1935; R.C.M. 1947, 16-1615; amd. Sec. 4, Ch. 251, L. 1979.

7-12-2155. Apportionment of costs between corner lots and inside lots. In order to apportion the cost of any of the improvements provided for in this part between the corner lots and inside lots of any block, the board of county commissioners may, in the resolution creating any improvement district, provide that whenever any of the improvements provided for in this part shall be along any side street or abutting upon the side of any corner lot or block, the amount of the assessment against the property in said district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(part).

7-12-2156. Responsibility for costs for improvements close to street railway. Whenever any portion of the surface of a street is kept or used by any person, firm, or corporation for railroad or for street railway purposes, the cost and expense of making such improvements between the rails and for 1 foot on each side thereof shall be paid by the person, firm, or corporation owning such railroad; and where double tracks of railroads are laid, such person, firm, or corporation shall pay the costs of making such improvement or improvements between such tracks and between all switches and spurs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(2).

7-12-2157. Status of federal property within improvement district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the board shall in the resolution of intention declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement. The cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the county from its general fund.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 12, Ch. 147, L. 1921; re-en. Sec. 4585, R.C.M. 1921; re-en. Sec. 4585, R.C.M. 1935; R.C.M. 1947, 16-1612.

7-12-2158. Resolution for levy and assessment of tax. (1) To defray the cost of making improvements in any special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this part.

(2) Such resolution shall contain a description of each lot or parcel of land, with the name of the owner if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent.

(3) Such resolution, signed by the chairman of the board, shall be kept on file in the office of the county clerk.

History: (1), (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R.C.M. 1921; re-en. Sec. 4586, R.C.M. 1935;

amd. Sec. 1, Ch. 140, L. 1947; amd. Sec. 1, Ch. 40, L. 1965; Sec. 16-1613, R.C.M. 1947; (3)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; Sec. 16-1614, R.C.M. 1947; R.C.M. 1947, 16-1613(part), 16-1614(part).

7-12-2159. Notice of resolution for levy and assessment of tax — protest and hearing. (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the county clerk and is subject to inspection, shall be published at least once in a newspaper published nearest to where the special improvement is to be made.

(2) The notice shall state the time at and place in which objections to the final adoption of the resolution will be heard by the board of county commissioners. The time for the hearing may not be less than 5 days after the publication of the notice.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; R.C.M. 1947, 16-1614(part); amd. Sec. 5, Ch. 251, L. 1979.

7-12-2160. Hearing on protest. (1) At the time so fixed, the board of county commissioners shall meet and hear all such objections and for that purpose may adjourn from day to day.

(2) The board may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer 2 days after its passage.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; R.C.M. 1947, 16-1614(part).

7-12-2161. Payment of maintenance costs — resolution for assessment and for change of boundaries. (1) It shall be the duty of the board to estimate, as near as practicable, the cost of maintaining, preserving, or repairing the improvements in each district for each year beginning January 1 or such other time as it may appear necessary.

(2) Before the first Monday in September of each year, the board shall pass and finally adopt a resolution levying and assessing all the property within the district with an amount equal to the whole cost of maintaining, preserving, or repairing said improvements within the district. The assessment shall be proportioned as provided in 7-12-2108.

(3) Said resolution levying assessments to defray the cost of maintenance, preservation, or repair of such improvements shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement district.

(4) The board shall have the power of changing by resolution, not more than once a year, the boundaries of any maintenance district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(part).

7-12-2162. Improvement district maintenance fund. The money collected from the assessment provided for in 7-12-2161 shall be paid into a fund known as the special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated. Such fund shall be used to defray the expense of maintenance, preservation, or repair of said improvements and for no other purpose.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(part).

7-12-2163. Collection of district assessments by county treasurer. Where any resolution of assessment, either for construction or maintenance, has been duly certified by the county clerk, it shall be the duty of the county treasurer, in accordance with the provisions of this title, to collect such assessment in the same manner and at the same time as taxes for general and municipal purposes are collected by him.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 22, Ch. 147, L. 1921; re-en. Sec. 4595, R.C.M. 1921; re-en. Sec. 4595, R.C.M. 1935; R.C.M. 1947, 16-1622.

7-12-2164. Payment of tax under protest — action to recover. (1) When any tax levied and assessed under any of the provisions of this part is deemed unlawful by the party whose property is thus taxed or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest to the county treasurer.

(2) Thereupon, such party so paying or his legal representative may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid or against the county in whose behalf the same was collected to recover such tax or any portion thereof so paid under protest. Any action instituted to recover such tax paid under protest must be commenced within 60 days after the date of payment thereof.

(3) The tax so paid under protest shall be held by the county treasurer until the determination of any action brought for the recovery thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 24, Ch. 147, L. 1921; re-en. Sec. 4597, R.C.M. 1921; re-en. Sec. 4597, R.C.M. 1935; R.C.M. 1947, 16-1624.

7-12-2165. Procedure to correct assessment and relevy and collect tax. (1) Whenever, by reason of any alleged nonconformity to law or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the board of county commissioners may make all necessary orders and may take all necessary steps to correct, reassess, and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by the law or resolution relating thereto. The board may reassess and relevy the tax or assessment with the same force and effect as an original levy.

(2) Any special tax, upon reassessment or relevy, shall, so far as practicable, be levied and collected the same as it would have been if the first levy had been enforced. Any provision of any law specifying a time when or order in which acts shall be done in a proceeding which may result in a special tax are subject to the qualifications of this part.

(3) Whenever any apportionment or assessment is made and any property is assessed too little or too much, the assessment may be corrected and reassessed for such additional amount as is proper or the assessment may be reduced even to the extent of refunding the tax collected.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 23, Ch. 147, L. 1921; re-en. Sec. 4596, R.C.M. 1921; re-en. Sec. 4596, R.C.M. 1935; R.C.M. 1947, 16-1623(part); amd. Sec. 6, Ch. 251, L. 1979.

7-12-2166. Certain errors not to invalidate assessments or liens. (1) When, under any of the provisions of this part, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

(2) Any mistake in the description of property or the name of the owner shall not vitiate any liens created by this part unless it is impossible to identify the property from the description.

History: (1)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 18, Ch. 147, L. 1921; re-en. Sec. 4591, R.C.M. 1921; re-en. Sec. 4591, R.C.M. 1935; Sec. 16-1618, R.C.M. 1947; (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 25, Ch. 147, L. 1921; re-en. Sec. 4598, R.C.M. 1921; re-en. Sec. 4598, R.C.M. 1935; Sec. 16-1625, R.C.M. 1947; R.C.M. 1947, 16-1618, 16-1625.

7-12-2167. Term of payment of assessments. (1) Except as provided in subsection (2), the payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed 30 years, payment to be made in equal annual installments.

(2) If federal loans are available, payments may be spread over a term of not to exceed 40 years.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R.C.M. 1921; re-en. Sec. 4586, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1947; amd. Sec. 1, Ch. 40, L. 1965; R.C.M. 1947, 16-1613(part).

7-12-2168. Assessments and certain other charges as liens. (1) Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied from and after the date of the passage of the resolution levying such assessment. This lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

(2) Any special assessment levied and made for any of the purposes mentioned in 7-12-2120 and 7-12-2161, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

History: (1)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 17, Ch. 147, L. 1921; re-en. Sec. 4590, R.C.M. 1921; re-en. Sec. 4590, R.C.M. 1935; Sec. 16-1617, R.C.M. 1947; (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619; R.C.M. 1947, 16-1617, 16-1619(part).

7-12-2169. Use of bonds and warrants. All costs and expenses incurred in any improvement district in the construction or maintenance of any improvement specified in this part shall be paid for by special improvement district bonds or warrants. The board of county commissioners shall provide for making payments for maintenance or improvements in any rural improvement district by the method provided in 7-12-2172 and 7-12-2173.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part).

7-12-2170. Form of bond or warrant. Such bonds or warrants shall be drawn in substantially the following form:

District No. ....
United States of America
State of Montana

Warrant or Dollars
(Bond No. ....) $....
Interest at the rate of .... % per annum, payable annually.

Special Improvement District Coupon
Warrant or Bond

...., Montana
Issued by the county of ...., Montana

The county treasurer of .... County, Montana, will pay to .... or bearer the sum of .... dollars as authorized by resolution No. ...., as passed on the .... day of ...., 19.., creating or maintaining the special improvement district No. .... for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of .... County, Montana.

This warrant (or bond) bears interest at the rate of .... % per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of .... each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached which bear the signatures of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof and in the manner provided for the redemption of the same.

It is hereby certified and recited that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened, and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of ...., Montana, relating to the issuance thereof.

Dated at ...., Montana, this .... day of ...., 19.., County of ...., Montana.
(SEAL)
By ...., chairman of the board of county commissioners.

(SEAL)
.... County clerk

Registered at the office of the county treasurer of .... County, Montana, this .... day of ...., 19...

.... County treasurer

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part).

7-12-2171. Details relating to rural improvement district bonds and warrants. (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district (that is, either the construction or maintenance fund, as the case may be) and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually on January 1 of each year unless the board of county commissioners prescribes another date. Such warrants (or bonds) shall bear the signatures of the chairman of the board and the county clerk and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the chairman of the board and the county clerk. Said coupons may bear the facsimile signatures of said officers in the discretion of the board.

(2) Said bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period of not to exceed 30 years; except that if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(2).

7-12-2172. Procedure to issue bonds and warrants. (1) The board of county commissioners shall sell bonds or warrants issued under the provisions of 7-12-2169 through 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash and for not less than the face value of such bonds or warrants, including interest thereon.

(2) The provisions of 7-7-4251 through 7-7-4254 which relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable thereto and not in conflict with the provisions of this section and 7-12-2173, shall apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling such bonds or warrants.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part).

7-12-2173. Disposition of bond or warrant proceeds. The board of county commissioners shall use the proceeds of such sale in making payment to the contractor or contractors. Such payment may be made either from time to time, on estimates made by the engineer in charge of such improvements for the county, or upon the entire completion of the improvements and the acceptance thereof by the board.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part).

7-12-2174. Redemption of bonds and warrants. (1) The county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration.

(2) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds available therefor in the special improvement district fund against which said warrants (or bonds) are issued. Whenever there are any funds in any special improvement district fund after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds) which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date.

(3) The date of redemption shall be fixed by the county treasurer and shall not be less than 10 days after the date of publication or of service of notice. The county treasurer shall give notice by publication once in a newspaper published in the city or, at the option of the county treasurer, by written notice to the holders of such warrants (or bonds), if their addresses be known, of the number of warrants (or bonds) and the date on which payment will be made. On the date fixed for redemption interest shall cease.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(3).

7-12-2175. Investment of interest and sinking fund money. (1) The governing body of a county in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank insured by the federal deposit insurance corporation or in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn.

History: En. Sec. 1, Ch. 45, L. 1965; R.C.M. 1947, 11-2288(part).

7-12-2176 through 7-12-2180 reserved.

7-12-2181. Creation of rural improvement district revolving fund. The board of county commissioners of any county in the state which may create any rural special improvement district or districts for any purpose shall (in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein and the interest thereon as it becomes due) create, establish, and maintain by resolution a fund to be known and designated as the rural special improvement district revolving fund.

History: En. Sec. 1, Ch. 188, L. 1957; R.C.M. 1947, 16-1633.

7-12-2182. Sources of money for revolving fund. (1) For the purpose of providing funds for such revolving fund the board of county commissioners:

(a) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be considered and shall be loans from such general fund to the revolving fund; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such county as shall be necessary to meet the financial requirements of such fund; such levy, together with such transfer, not to exceed in any one year 5% of the principal amount of the then-outstanding rural special improvement district bonds and warrants.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-2183 shall, by order of the board, be transferred to the revolving fund. After all the bonds and warrants issued on any rural special improvement district have been fully paid, all money remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund.

History: En. Secs. 2, 4, Ch. 188, L. 1957; R.C.M. 1947, 16-1634, 16-1636(part).

7-12-2183. Loan from revolving fund to meet payments on bonds and warrants. Whenever any rural special improvement district bond or warrant or any interest thereon shall become due and payable and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the board of county commissioners, be loaned by the revolving fund to such district fund. Thereupon, such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

History: En. Sec. 3, Ch. 188, L. 1957; R.C.M. 1947, 16-1635(1).

7-12-2184. Lien arising due to loan from revolving fund. (1) Whenever any loan is made to any rural special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments and on all unpaid assessments and installments of assessments on such district (whether delinquent or not) and on all money thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond or warrant for payment of which, or of interest thereon, such loan was made.

(2) If, after all the bonds and warrants issued on any rural special improvement district have been fully paid and all moneys remaining in such district fund have been transferred to the revolving fund, there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the revolving fund.

History: **En. Sec. 4, Ch. 188, L. 1957; R.C.M. 1947, 16-1636(part).**

7-12-2185. Covenants to utilize revolving fund. (1) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof, to the extent that funds are available; and

(b) to provide funds for such revolving fund pursuant to the provisions of 7-12-2182 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the board may so agree to and undertake, subject to the maximum limitations imposed by 7-12-2182.

(2) The undertakings and agreements shall be binding upon said county so long as any of said special improvement district bonds or warrants so offered or any interest thereon remain unpaid.

History: **En. Sec. 3, Ch. 188, L. 1957; R.C.M. 1947, 16-1635(2).**

7-12-2186. Utilization of excess money in revolving fund. Whenever there is in the revolving fund an amount in excess of the amount which the board deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the board may order such excess or any part thereof transferred to the general fund of the county.

History: **En. Sec. 5, Ch. 188, L. 1957; R.C.M. 1947, 16-1637.**

Part 22

Special Provisions for Districts for Lighting

7-12-2201. Maintenance of lighting system. When there has been or shall be created a rural improvement district, according to the provisions of part 21, for the purpose of securing a lighting system for the territory embraced in such rural improvement district, the board of county commissioners of such county may enter into a contract with other persons or corporations for the purpose of furnishing light to said rural improvement district when:

(1) no expense of construction is incurred by such rural improvement district in the installation of such lighting system;

(2) it is necessary only to secure funds for the maintenance and operation of said system; and

(3) lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(1).

7-12-2202. Apportionment of costs of maintaining lighting system. (1) The cost of the maintenance and operating service to said rural improvement district may be apportioned among the various tracts of land within said improvement district:

(a) in proportion to the assessed value of said lands within said improvement district, as determined by the board of county commissioners;

(b) at the option of said board and as determined by said board, in proportion to the lineal front footage of each tract, any part of which is in the district and abuts the street or roadway along which the lighting system is to be maintained; or

(c) in proportion to the area, as determined by said board, of that portion of each tract included in the district.

(2) (a) Before the first Monday of September of each year, the board shall pass and finally adopt a resolution levying and assessing upon all the property within the district an amount equal to the whole cost of maintaining said lighting system. The same shall be proportioned against the several tracts of land in said district as provided in this part.

(b) Said resolution levying assessments to defray the cost of maintenance shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement districts.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

7-12-2203. Rural improvement district maintenance fund. (1) The money collected pursuant to 7-12-2202, shall be paid into a fund known as the special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated.

(2) Such funds shall be used to defray the expense of maintenance of said system and for no other purpose.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

7-12-2204. Alteration of maintenance district boundaries. The board has the power, by resolution, of changing not more than once a year, the boundaries of any maintenance district.

History: En. Sec. 2, Ch. 58, L. 1933; re-en. Sec. 4601.2, R.C.M. 1935; R.C.M. 1947, 16-1630(part).

7-12-2205. Assessment and certain other charges as lien. Any assessment levied and made for any purpose mentioned in this part, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied from and after the date of the final passage and adoption of the resolution levying the same. This lien can be only extinguished by payment of such assessments, with all penalties, costs, and interest.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

7-12-2206. Application of part. Provisions of this part shall only apply to the method of securing funds for the maintenance of rural improvement districts for lighting systems.

History: En. Sec. 2, Ch. 58, L. 1933; re-en. Sec. 4601.2, R.C.M. 1935; R.C.M. 1947, 16-1630(part).

Part 23

Special Provisions for Districts for Sanitary and Storm Sewers

7-12-2301. Rental provisions of municipal public sewer law applicable to rural districts. The provisions of part 42 of chapter 13 referring to sewer rentals apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, and the powers conferred on councils in part 42 of chapter 13 are conferred on each board of county commissioners as far as those powers relate to sewer rentals.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(6); amd. Sec. 7, Ch. 251, L. 1979.

Parts 24 through 40 reserved

Part 41

Special Improvement Districts

7-12-4101. Definitions. Unless the context indicates otherwise, as used in this part and part 42, the following definitions apply:

(1) "Blocks" means blocks, whether regular or irregular, that are bounded by main streets or by main streets and a boundary line of the city.

(2) "City" or "municipality" means all corporations organized for municipal purposes.

(3) "City clerk" or "clerk" means any person or officer who is clerk of the council.

(4) "City council" means any body or board that is the legislative department of the government of the city.

(5) "City engineer" means any person or officer who is responsible for the maintenance and improvement of the streets in a city.

(6) "City treasurer" means any person who, under whatever name or title, is the custodian of the funds of the municipality.

(7) "Incidental expenses" means the compensation of the city engineer for work done by him, the cost of printing and advertising as provided in this part and part 42, the compensation of persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this part, or the expenses of making the assessment for any work authorized by this part.

(8) "Main street" means such actually opened street as bounds a block.

(9) "Paved" or "repaved" means pavement of stone (whether paving blocks or macadam), of bituminous rock or asphalt, or of wood, brick, or

other material (whether patented or not) which the city council adopts by ordinance or resolution.

(10) "Quarter-block", when used in reference to irregular blocks, means all lots or portions of lots having any frontage on either of two intersecting streets halfway from the intersection to the next main street or, when no main street intervenes, all the way to a boundary line of the city.

(11) "Street" means avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years.

(12) "Street intersection" means that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

(13) "Work", "improved", or "improvement" means all work or the securing of property mentioned in this part and part 42 and also the construction, reconstruction, and repair of all or any portion of work.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part); amd. Sec. 8, Ch. 251, L. 1979.

7-12-4102. Authorization for creation of special improvement districts. (1) The city or town council has power to create special improvement districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding 20 years; to make such assessments payable in installments; and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants.

(2) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to:

(a) create special improvement districts for building, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city:

(i) graded or regraded to the official grade;
(ii) planked or replanked;
(iii) paved or repaved;
(iv) macadamized or remacadamized;
(v) graveled or regraveled;
(vi) piled or repiled;
(vii) capped or recapped;
(viii) surfaced or resurfaced;
(ix) oiled or reoiled;

(d) create special improvement districts and order the construction or reconstruction therein of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees thereon;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by such city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes, hose connections for irrigating; hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water;

(f) create special improvement districts and order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of such city; and

(g) maintain, preserve, and care for any and all of the improvements herein mentioned.

History: (1)En. Subd. 80, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.79, R.C.M. 1947; amd. Sec. 11, Ch. 234, L. 1971; Sec. 11-982, R.C.M. 1947; (2)En. Sec.2, Ch. 89, L. 1913; amd Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; Sec. 11-2202, R.C.M. 1947; R.C.M. 1947, 11-982, 11-2202(part).

7-12-4103. Formation of district to defray cost of acquiring private property. The city council is also hereby authorized to create a district as hereinafter specified for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; R.C.M. 1947, 11-2202(part).

7-12-4104. Resolution of intention to create special improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the

improvement or improvements which are to be made and an approximate estimate of the cost thereof. When any improvement is to be made in paving, the city or town council may in describing the general character of the same describe several kinds of paving.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(1).

7-12-4105. Reference to description in resolution of intention sufficient. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements in any and all improvement districts, it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for the description and further particulars.

History: En. Sec. 7, Ch. 89, L. 1913; re-en. Sec. 5231, R.C.M. 1921; re-en. Sec. 5231, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1955; R.C.M. 1935, 11-2208.

7-12-4106. Notice of passage of resolution of intention. (1) Upon having passed such resolution, the council must give notice of the passage of such resolution of intention.

(2) The notice must be published for 5 days in a daily newspaper or in some one issue of a weekly paper published in the city or town or, in case no newspaper be published in such city, then by posting for 5 days in three public places in the city or town. A copy of such notice shall be mailed to every person, firm, or corporation or the agent of such person, firm, or corporation having real property within the proposed district listed in his name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, upon the same day such notice is first published or posted.

(3) Such notice must describe the general character of the improvement or the improvements so proposed to be made, state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements or the creation of such district. Said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(part).

7-12-4107. General provisions related to notice. (1) (a) The notices, resolutions, orders, or other matter required to be published by the provisions of this part or part 42 shall be published in a daily newspaper or in a semiweekly or weekly newspaper to be designated by the council of such city, as often as the same is issued during the period specified for said publication; and no other statute shall govern or be applicable to the publications herein provided for.

(b) In case there is no daily, semiweekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders, or other matters as are herein required to be published in a newspaper shall be posted and kept posted, for the same length of time as required herein for the publication of the same in a daily, semiweekly, or weekly newspaper, in three of the most public places in such city except as herein otherwise specifically provided.

(2) Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the poster of the notice.

(3) No publication or notice other than that provided for in this part or part 42 shall be necessary to give validity to any of the proceedings provided for therein.

(4) The word "twice", as used in this part and part 42 referring to the number of times notices, resolutions, or other matters shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(4).

7-12-4108. Responsibility for posting and publication of notice. (1) Whenever any resolution, order, notice, or determination is required to be published or posted and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be.

(2) No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or determination hereunder when the same is actually published or posted for the time herein required.

History: En. Sec. 34, Ch. 89, L. 1913; re-en. Sec. 5257, R.C.M. 1921; re-en. Sec. 5257, R.C.M. 1935; R.C.M. 1947, 11-2243.

7-12-4109. Extension of proposed district. The city council may charge the expenses of the work or improvement to an extended district that may include other lots not fronting on the improvement and which the council in its resolution of intention declares to be the district benefited by the work or improvements whenever:

(1) the contemplated work of improvement, in the opinion of the council, is of more than local or ordinary public benefit; or

(2) the total estimated costs and expenses thereof, according to estimates furnished by the city engineer, would exceed one-fifth of the total taxable value of the lots and lands fronting upon said proposed work or improvement according to the valuation fixed by the last assessment roll.

History: En. Sec. 4, Ch. 89, L. 1913; re-en. Sec. 5228, R.C.M. 1921; amd. Sec. 1, Ch. 135, L. 1923; amd. Sec. 1, Ch. 150, L. 1929; re-en. Sec. 5228, R.C.M. 1935; amd. Sec. 29, Ch. 566, L. 1977; R.C.M. 1947, 11-2205.

7-12-4110. Protest against proposed work or district. (1) At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed or both.

(2) Such protest must be in writing and be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day

within said 15-day period. Said clerk shall endorse thereon the date and hour of its receipt by him.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(1).

7-12-4111. Who considered owner. (1) The person owning the fee; the person in whom, on the day the action is commenced, appears the legal title to the lot and lands by deed duly recorded in the county recorder's office in each county; or the person in possession of lands, lots or portions of lots, or buildings under claim or exercising acts of ownership over the same for himself or as the executor, administrator, or guardian of the owner shall be regarded, treated, and deemed to be the "owner" for the purpose of this part and part 42, according to the intent and meaning of that word as used in this part and part 42.

(2) In case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(1).

7-12-4112. Hearing on protest. (1) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) The council or commission may adjourn said hearing from time to time. Protestants shall have the right to withdraw protest or protests at any time before final action thereon by the council or commission.

(3) In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered to the same effect as other property in the proposed district.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(part).

7-12-4113. Sufficient protest to bar proceedings — exceptions. (1) Except as provided in subsections (2) and (3), no further proceedings shall be taken for a period of 6 months from the date when said sufficient protest shall have been received by said clerk of the city or town council or commission when the protest is against the proposed work and:

(a) the cost thereof is to be assessed against property fronting thereon and the council or commission finds that such protest is made by the owners of more than 50% of the property fronting on the proposed work; or

(b) the cost thereof is to be assessed upon the property within an extended district and the council or commission finds that such protest is made by the owners of more than 50% of the area of the property to be assessed for said improvements.

(2) The council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface when

the improvement proposed is the paving, with necessary incidentals, of not more than one cross block to connect with streets or avenues already paved for a continuous distance of three blocks or more running at a right angle (or substantially so) with the single cross block so proposed to be paved.

(3) In case the improvement is the construction of a sanitary sewer, such protest may be overruled by an affirmative vote of a majority of the members of the council or commission unless such protest is made by the owners of more than 75% of the property affected, as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

History: **En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(part).**

7-12-4114. Resolution creating special improvement district. When no protests have been delivered to the clerk of the city council within 15 days after the date of the first publication of the notice of the passing of the resolution of intention, when a protest shall have been found by said council to be insufficient or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon, the council shall be deemed to have acquired jurisdiction to order the proposed improvements. Before ordering any of said proposed improvements, the council shall pass a resolution creating the special improvement district in accordance with the resolution of intention theretofore introduced and passed by the council.

History: **En. Sec. 6, Ch. 89, L. 1913; amd. Sec. 4, Ch. 142, L. 1915; re-en. Sec. 5230, R.C.M. 1921; re-en. Sec. 5230, R.C.M. 1935; R.C.M. 1947, 11-2207.**

7-12-4115. Statement of allocation of assessments to improvements, repairs, and maintenance. In all cities or towns, the city or town council shall have power and it is hereby made the duty of each council (where it is necessary or advisable in connection with any special improvement district to provide, in addition to the construction of the proposed improvements, for repairs to existing facilities or for maintenance of improvements or repairs or for both such repairs and maintenance) to include in the resolution or ordinance creating such special improvement district or providing for assessments to defray the cost of improvements, repairs, and maintenance, a statement showing the allocation of the total amounts, either in dollars and cents or in percentages of said total amounts, to be assessed or assessed to said different purposes: to improvements, to repairs, if any, and to maintenance, if any.

History: **En. Sec. 1, Ch. 39, L. 1953; R.C.M. 1947, 11-2286.**

7-12-4116. Designation of nature of improvement district. In all cases set out in 7-12-4115, the city or town council shall designate the special district formed as a special improvement and repair district or a special improvement and maintenance district or a special improvement, repair, and maintenance district, as the case may be.

History: **En. Sec. 2, Ch. 39, L. 1953; R.C.M. 1947, 11-2287.**

7-12-4117. Combination of several improvements in one resolution. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this part and any number of streets and rights-of-way or portions thereof, and it may except therefrom any of said work already done upon a street to the official grade.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(part).

7-12-4118. Adjournment of hearings. Whenever in proceedings hereunder a time and place for hearing are fixed by the city council and from any cause the hearing is not then and there held or regularly adjourned to a fixed time and place, the power or jurisdiction of the council in the premises shall not thereby be divested or lost, but the council may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least 5 days before the date of the hearing. Thereupon the council shall have power to act as in the first instance.

History: En. Sec. 32, Ch. 89, L. 1913; re-en. Sec. 5256, R.C.M. 1921; re-en. Sec. 5256, R.C.M. 1935; R.C.M. 1947, 11-2242.

7-12-4119. Appointment of person to serve as city engineer. In all those cities where there is no city engineer, the city council is hereby authorized and empowered to appoint a suitable person to discharge the duties laid down as those of the city engineer in this part, and all provisions of this part applicable to the city engineer shall apply to such person so appointed.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part).

7-12-4120. Provision for municipalities not having mayor. In municipalities in which there is no mayor, the duties imposed upon said officer by the provisions of this part and part 42 shall be performed by the president of the council or other chief executive officer of the municipality.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(10).

7-12-4121. Record of expenses to be kept by city engineer. It shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district and certify the same to the city clerk.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part).

7-12-4122. Role of city clerk. It shall be the duty of the city clerk to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part).

7-12-4123. Manner of making demands for incidental expenses. All demands for incidental expenses mentioned in 7-12-4101(7) shall be presented to the city clerk by itemized bill, duly verified by oath of the demandant.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part).

7-12-4124 through 7-12-4130 reserved.

7-12-4131. Modification of trafficways and courts for special improvement districts. All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated or which may hereafter be opened or dedicated to public use, are open public streets, alleys, places, or courts for the purposes of this part. The city council of each municipality may establish and change the grades of the streets, alleys, places, or courts and fix the width thereof and may acquire private property for right-of-way and order to be done any of the work mentioned in this part under the proceedings described in this part.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(1).

7-12-4132. Power to require underground placement of utilities within district. (1) It is provided that the city council shall have the same jurisdiction and powers as provided in 7-12-4102 and 7-12-4103 (before doing any of the work mentioned in this part) to require any public service corporation or company, firm, or person occupying such streets, avenues, or alleys, at their own expense and within a reasonable time to be fixed by the council, to place in an underground conduit, in such manner as may be directed by the council, all wires; electric conduits; or telephone, telegraph, power, or power transmission lines or appurtenances thereto or appliances owned, held, or enjoyed in connection therewith.

(2) The whole cost so assessed shall at no time exceed the sum of $1.50 per lineal foot plus the cost of the pipe.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; R.C.M. 1947, 11-2202(2); amd. Sec. 1, Ch. 594, L. 1979.

7-12-4133. Power to require certain utility connections. (1) The city or town council shall have power to require connections from gas pipes, water pipes, steam heating pipes, and sewers to the curb line of the adjacent property to be made before the permanent improvement of the streets whereon they are located and to regulate the making of such connections on the already improved streets or on unimproved streets.

(2) (a) In case the owners of the property on such streets shall fail to make such connections within the time fixed by the council, the council may cause such connections to be made and shall assess against the property in front of which said connections are made the entire cost and expense thereof.

(b) All assessments levied under the provisions of this section shall be enforced and collected in the same manner as other special assessments provided for in part 44 of chapter 6 and amendments thereof. All such assessments shall be a lien against the property.

History: En. Sec. 2, p. 213, L. 1897; re-en. Sec. 3368, Rev. C. 1907; re-en. Sec. 5226a, R.C.M. 1921; re-en. Sec. 5226.1, R.C.M. 1935; R.C.M. 1947, 11-2203.

7-12-4134. Special provision for paving street in which car tracks are located. Where the special improvement contemplated is the paving of a street in which car tracks have been constructed, the city shall have the power and authority to order the general character of the material between the rails and 1 foot on each side of the rails to be of a different kind from that used in the remainder of the street. The general character of the material to be used between the car tracks and 1 foot on each side of the rails shall be described in the resolution of intention in the same manner as the general character of the material used for the rest of the contemplated pavement.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(3).

7-12-4135. Responsibility for repairs due to operation of street railway. (1) Whenever any portion of the surface of a paved street is occupied or used for railway or street railway purposes, it shall be the duty of the owner or operator of such railway or street railway to fully repair any injury or damage to such pavement caused by such railway or street railway, either in the operation of its cars or in the laying or repair of its tracks.

(2) In case of a failure or refusal of such owner or operator to so repair such pavement within a reasonable time after notice by the city council or commission, the council or commission is authorized and empowered to cause such repairs to be made and to assess the cost thereof to such owner or operator and to enforce collection thereof as in the case of taxes.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(2).

7-12-4136. Maintenance of improvements. Where trees have been planted or grassplots constructed and grass sown thereon or any one or more of said improvements have been made in a special improvement district, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed and to otherwise maintain and preserve said improvements as the council shall deem suitable and proper.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part).

7-12-4137 through 7-12-4140 reserved.

7-12-4141. Bid for work. (1) The city council may call for bids or proposals for several kinds and types of materials for any improvements proposed to be made under this part and part 42, reserving the right to select the kind or type of material to be used in making any such improvements after the bids or proposals therefor shall have been opened, examined, and declared.

(2) Notice inviting proposals and referring to the specifications on file shall be published at least twice in a daily, semiweekly, or weekly newspaper published and circulated in said city and designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall be posted in at least three public places.

(3) The time fixed for the opening of bids shall be not less than 10 days from the time of the final publication of said notice. All proposals or bids

offered shall be accompanied by bid security as provided for in Title 18, chapter 1, part 2. Said proposals or bids shall be delivered to the clerk of the city council.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4142. Opening of bids. The bids shall be opened in public at a time and place to be designated by the city council at the previous council meeting.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4143. Decision on award of contract. (1) The city council may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder.

(2) The council may reject any and all proposals or bids should it deem this for the public good and may also reject the bid of any party who has been delinquent or unfaithful in any former contract with the municipality.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4144. Procedure if all bids rejected or no bids received. If the bids are rejected or no bids are received, the city council may, at any time within 2 years thereafter and whenever and as often as the council deems it advantageous, readvertise for proposals or bids for the performance of the work as herein provided without further proceedings and thereafter proceed in the manner provided in 7-12-4141 through 7-12-4145.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4145. Procedure for dealing with bid securities. (1) If bids are rejected, the city council shall thereupon return to the proper parties the bid securities corresponding to the bids so rejected.

(2) The bid securities accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into either by said lowest bidder or by the owners of over 50% of the frontage, whereupon said bid security shall be returned to said bidder.

(3) If said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements as hereinafter provided, then the bid securities accompanying his bid and the amount therein mentioned shall be declared to be forfeited to said city and shall be collected by it and paid into the general fund.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4146. Retroactive application of bid procedures. The provisions of 7-12-4141 through 7-12-4145 shall be applicable to all special improvement districts created within 1 year preceding March 16, 1931.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4147. Procedure for property owners to do improvement work. The owners of three-fourths of the frontage of lots and lands liable to be assessed or their agents, who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids but may, within 3 days after the award pursuant to 7-12-4143, elect to take such work and enter into a written contract to do the whole work at a price at least 5% less than the price at which the same has been awarded. All work done under such contract shall be subject to the same plans and specifications governing the lowest responsible bidder.

History: En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R.C.M. 1921; re-en. Sec. 5233, R.C.M. 1935; R.C.M. 1947, 11-2210(part).

7-12-4148. Contract with successful bidder. Should the owners referred to in 7-12-4147 fail to elect to take said work, to enter into a written contract therefor within 3 days, or to commence the work within 15 days after the date of such written contract and to prosecute the same with diligence to completion, it shall be the duty of the city council to enter into a contract with the original bidder to whom the contract was awarded at the prices specified in his bid.

History: En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R.C.M. 1921; re-en. Sec. 5233, R.C.M. 1935; R.C.M. 1947, 11-2210(part).

7-12-4149. Procedure if successful bidder does not enter into contract. (1) If the original bidder neglects, fails, or refuses for 15 days after the notice of award to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids as in the first instance and award the contract for said work to the then-lowest regular bidder.

(2) Should no bids be received in response to the call for proposals, the council may again advertise for bids under the same proceedings at any time within 6 months from the time set for the last reception of bids and let the contract to the then-lowest bidder. Such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder.

History: En. Sec. 10, Ch. 89, L. 1913; re-en. Sec. 5234, R.C.M. 1921; amd. Sec. 2, Ch. 173, L. 1931; re-en. Sec. 5234, R.C.M. 1935; R.C.M. 1947, 11-2211(part).

7-12-4150. Effect of failure to enter contract. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract shall be rejected in any bidding or election subsequent to the first for the same work.

History: En. Sec. 10, Ch. 89, L. 1913; re-en. Sec. 5234, R.C.M. 1921; amd. Sec. 2, Ch. 173, L. 1931; re-en. Sec. 5234, R.C.M. 1935; R.C.M. 1947, 11-2211(part).

7-12-4151. Contractor's bond for successful completion of work. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council in the form and manner provided for in Title 18, chapter 2, part 2.

History: En. Sec. 12, Ch. 89, L. 1913; re-en. Sec. 5236, R.C.M. 1921; re-en. Sec. 5236, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1975; R.C.M. 1947, 11-2213.

7-12-4152. Procedure if person entering contract defaults on work. (1) If the contractor or owner who may have taken any contract does not complete the same within the time limited in the contract or within such further time as the city council may give him, the city engineer shall report such delinquency to the council.

(2) (a) The council may relet the unfinished portion of said work after pursuing the formalities prescribed in 7-12-4141 through 7-12-4145 for the letting of the whole in the first instance.

(b) The city shall have the right, at its option, to complete the contract and deduct any cost in excess of the contract price thereof from any money, bonds, or warrants due such contractor or owners. In the event there is no money, bonds, or warrants due such contractor or owners from which to deduct such cost, then the city shall have the right to sue such contractor or owners and recover from him such cost.

History: En. Sec. 11, Ch. 89, L. 1913; amd. Sec. 6, Ch. 142, L. 1915; re-en. Sec. 5235, R.C.M. 1921; re-en. Sec. 5235, R.C.M. 1935; R.C.M. 1947, 11-2212.

7-12-4153 through 7-12-4160 reserved.

7-12-4161. Choice in manner of assessing costs. (1) Except as provided in subsection (2), to defray the cost of the making of any of the improvements provided for in this part, the city council or commission shall adopt one of the methods of assessment, where applicable, provided in 7-12-4162 through 7-12-4165.

(2) The method of assessment provided for in 7-12-4163 shall not apply to assessments in improvement districts created under the provisions of 7-12-4109.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part).

7-12-4162. Assessment of costs — area option. (1) The city council or commission shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(3) In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within 25 feet of the line of the street on which the improvement is to be made and all other land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the

assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of land within the district lying within 25 feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other land within the district shall bear.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(1)(a).

7-12-4163. Assessment of costs — frontage option. (1) The city council or commission shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district bordering or abutting upon a street or streets whereon or wherein the improvement has been made to be assessed in proportion to the lineal feet abutting or bordering the same.

(2) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part).

7-12-4164. Assessment of costs — combined area-frontage option. Where curbs, gutters, alley approaches, streets, crossings, and utility service connections are an integral part of the creation of storm sewer districts, sanitary sewer districts, or street pavement districts, the city council or commission may assess a portion of the improvements upon the area basis as set forth under 7-12-4162, other portions of the improvements upon a lineal-feet basis as set forth under 7-12-4163, and utility service connections upon a lump sum based on the bid price in the improvement district contract and assessed only against the lots, tracts, or parcels of land served by the utility connection or connections, all within the same special improvement district, so long as such assessment is equitable.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(1)(c).

7-12-4165. Assessment of costs — offstreet parking option. (1) When the purpose of the assessment is for the establishment and/or improvement of offstreet parking as provided in this section, the city council or commission shall assess, against the real property specifically benefited by the offstreet parking facilities, the cost of the developments involved in proportion to the benefits received by each tract of land within said district.

(2) In determining the benefit to be received by each parcel of land, the council or commission shall consider:

(a) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(b) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(c) the assessed value of each parcel within said district;

(d) the square footage of each parcel within said district as it relates to the whole;

(e) the square footage of floorspace in any improvements on the parcel and the various uses of such floorspace;

(f) the availability of existing on-site parking space on any parcel of land within the district.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part).

7-12-4166. Land fronting excepted work not subject to assessment. The lots or portions of lots fronting upon excepted work referred to in 7-12-4117, already done, shall not be included in the assessment for the class of work from which the exception is made, provided that this shall not be construed so as to affect the special provisions as to grading contained in 7-12-4167.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(4).

7-12-4167. Provision for grading street by owner of abutting property. (1) It shall be lawful for the owner or owners of the lots or land fronting upon any street the width and grade of which shall have been established by the city council or commission to perform, at his or their own expense (after obtaining permission from the council or commission to do so but before said council or commission has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width or to the centerline thereof and to its grade, as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer setting forth the number of cubic yards of cutting and filling made by him or them in such grading and proportions performed by each owner and that the same is done to establish width and grade of said street or to the centerline thereof and thereafter to file said certificate with the city engineer. The engineer shall record the certificate in a properly indexed book kept for that purpose in his office.

(2) (a) Thereafter, whenever the council or commission orders the grading of said street or any portion thereof on which any grading, certified as provided in subsection (1), has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading. The owner or owners and his or their successors in interest shall be entitled to credit on the assessment upon his or their lots and lands fronting on said street for the grading thereof to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade. Such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them and proportionately assessed for the whole of said grading.

(b) The city clerk shall include in the assessment, for the whole of said grading upon the same grade, the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade, so much of said certified work as would be required for grading thereto and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned, respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(4), (5).

7-12-4168. Provision for work other than grading done by owner of property. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done or shall hereafter do any work (excepting grading) on such street in front of any block at his or their own expense and the city council or commission shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done, provided that the work so done at the expense of such owner or owners shall be upon the official grade and in condition satisfactory to the city engineer at the time said order is passed.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(6).

7-12-4169. Incidental expenses considered as cost of improvements. The costs and expenses connected with and incidental to the formation of any special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; and preparation of assessment rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part).

7-12-4170. Payment of damages incurred as a result of improvements. Whenever the owner or anyone interested in any property situated within any special improvement district, after filing with the clerk a written notice claiming that his property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of any improvement in the special improvement district:

(1) if the resolution levying the assessment to defray the cost of making the improvement in the district is not passed and adopted by the city council, the amount to be recovered shall be added to and constitute a part of the cost of making the improvement; but

(2) if the resolution levying the assessment to defray the costs and expenses of making the improvement has been passed and adopted by the council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in the district for the purpose of paying

the amount awarded and the supplemental resolution shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvement.

History: En. Sec. 19, Ch. 89, L. 1913; re-en. Sec. 5243, R.C.M. 1921; re-en. Sec. 5243, R.C.M. 1935; R.C.M. 1947, 11-2225; amd. Sec. 9, Ch. 251, L. 1979.

7-12-4171. Treatment of corner lots for purposes of assessment. For the purposes of special assessments levied against property as provided in this part through part 45, when assessments for improvements on both sides of a corner lot are determined in proportion to the lineal footage, the frontage of a corner lot in a platted block is the average of the two abutting sides.

History: En. 11-2289 by Sec. 1, Ch. 404, L. 1977; R.C.M. 1947, 11-2289.

7-12-4172. Allocation of costs of nonfrontage sides. The governing body shall allocate to all lots in the special improvement district a proportionate share of the costs according to the lineal feet assigned to each lot.

History: En. 11-2290 by Sec. 2, Ch. 404, L. 1977; R.C.M. 1947, 11-2290.

7-12-4173. Status of federal property within improvement district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. The cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the city from its general fund.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(3).

7-12-4174. Inclusion and assessment of unplatted, undedicated, or unsurveyed land in improvement district. Whenever any unplatted, undedicated, or unsurveyed lot, piece, or parcel of land that separates one platted part of the city from another platted part of said city, lying wholly within the boundaries of any city or town and except land owned by the United States, shall abut or border upon any special improvement district or be included within the boundaries of any special improvement district of such city or town, the city of town council may cause the same to be included within and made a part of such special improvement district in the same manner as other property within such special improvement district and may assess the same for its proportionate share of the cost of making or maintaining such improvements in the same manner as other property within such special improvement district.

History: En. Sec. 1, Ch. 16, L. 1923; re-en. Sec. 5238.1, R.C.M. 1935; R.C.M. 1947, 11-2215.

7-12-4175. Ordinance setting forth method of assessment required — hearing. (1) Before any improvement district can be created or financed under the provisions of 7-12-4161 through 7-12-4165, the city council or commission must, prior to the creation of said district, pass a city ordinance setting forth therein the formula to be used in determining the assessment of each lot or parcel within said district. The formula must include but shall not be limited to the items to be considered as set forth in 7-12-4161 through 7-12-4165.

(2) Prior to the adoption of any such ordinance by the council or commission, the council or commission shall make a determination of the formula for the method of assessment as set forth above, considering all of the factors above set forth, and shall hold a public hearing after due notice. At such hearing all persons concerned may present their objections to the formula or any part of it and point out errors and inequities and submit reasons for amendments and corrections. The council may continue the hearing from time to time.

(3) After the council has heard all objections and suggestions, it shall correct any errors which it finds in the formula for assessment as originally made and shall finally establish and settle the formula for assessment in the same manner as any other city ordinance.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part).

7-12-4176. Resolution for tax levy upon district property. (1) To defray the cost of making improvements in any special improvement district or of acquiring property for opening, widening, or extending any street or alley or to defray the cost and expense of changing any grade of any street, avenue, or alley, the city council shall by resolution levy and assess a tax upon all property in any district created for such purpose, using for a basis for assessment one of the methods set forth in 7-12-4161 through 7-12-4165.

(2) Such resolutions shall contain a description of each lot and parcel of land, with the name of the owner, if known, the amount of each partial payment to be made, and the day when the same shall become delinquent.

(3) Such resolution, signed by the mayor and clerk, shall be kept on file in the office of the city clerk.

History: (1), (2)En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R.C.M. 1921; re-en. Sec. 5240, R.C.M. 1935; Sec. 11-2222, R.C.M. 1947; (3)En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; Sec. 11-2223, R.C.M. 1947; R.C.M. 1947, 11-2222(part), 11-2223(part).

7-12-4177. Notice of resolution for tax levy — protest and hearing. (1) A notice signed by the city clerk, stating that the resolution levying the special assessment to defray the cost of such improvements is on file in his office and subject to inspection for a period of 5 days, shall be published at least once in a newspaper published in the city or town.

(2) Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council. The time for such hearing shall not be less than 5 days after the publication of such notice.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; R.C.M. 1947, 11-2223(part).

7-12-4178. Hearing on resolution for tax levy. (1) At the time so fixed, the council shall meet and hear all such objections and for that purpose may adjourn from day to day.

(2) The council may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer within 2 days after its passage.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; R.C.M. 1947, 11-2223(part).

7-12-4179. Payment of maintenance costs — resolution for assessment. (1) The cost of maintaining the improvements shall be paid by assessing the entire district under a permissible assessment option as provided in 7-12-4162 through 7-12-4165.

(2) It is the duty of the council to estimate, as nearly as practicable, the cost of maintaining the improvements in each district for the season. Before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining the improvements within the several districts.

(3) The resolution levying assessments to defray the cost of maintenance of the improvement shall be prepared and certified in the same manner as a resolution levying assessments for making improvements in the special improvement district.

(4) The council may change by resolution, not more than once a year, the boundaries of any maintenance district, but the change of boundaries may not affect indebtedness existing at the time of the change.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part); amd. Sec. 10, Ch. 251, L. 1979.

7-12-4180. Improvement district maintenance fund. The money collected from the assessment provided for in 7-12-4179 shall be paid into a fund known as special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part).

7-12-4181. Collection of district assessments by county clerk — certification. (1) Except as provided in 7-12-4183, in every city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4407 immediately after the second Monday of August of each year, it shall be the duty of the city treasurer or town clerk to certify, at the same time the copy of the resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk as required by 7-6-4407, to the county assessor of the county in which such city or town is situated all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42.

(2) The county assessor shall thereupon enter same upon the assessment roll of the county. The county treasurer must collect all such taxes and assessments in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by him.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1945; R.C.M. 1947, 11-2233.

7-12-4182. Collection of district assessments by city treasurer in cities collecting their own taxes — delinquencies. (1) In every city or town which shall provide by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, such city treasurer or town clerk shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42 in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by him. All of the provisions of 7-6-4423 shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes.

(2) When one payment becomes delinquent, all payments shall, at the option of the city or town council and by appropriate resolutions duly adopted, become delinquent and the whole property shall be sold the same as other property is sold for taxes.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.1, R.C.M. 1935; R.C.M. 1947, 11-2234.

7-12-4183. Collection of district assessments by city treasurer in cities where county collects taxes. (1) In any city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4407 and 7-6-4423, the city or town may, nevertheless, provide by ordinance for the collection by its city treasurer or town clerk of all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42 in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by the county treasurer. All of the provisions of 7-6-4423 shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes.

(2) When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments shall, at the option of the city or town council and by appropriate resolution duly adopted, become delinquent. Such delinquent special assessments shall be certified to the county clerk of the county in which such city or town is situated, and the county treasurer must collect such delinquent special assessments and taxes in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by him. In case the same are not paid, the whole property shall be sold, the same as other property is sold for taxes.

History: En. Subd. (c), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.2, R.C.M. 1935; R.C.M. 1947, 11-2235.

7-12-4184. Reinstatement of delinquent assessment. (1) Whenever any special assessment or installment is delinquent, is declared to be delinquent by appropriate resolution of the city or town council, and is certified to the county clerk and county treasurer for collection as herein provided, the city or town council may, nevertheless, at its option, by appropriate resolution, order the delinquent assessment to be withdrawn from the county treasurer, canceled from his records and proceedings, and reinstated in the office of the city treasurer and on the assessment book thereof upon the payment to the city treasurer of the assessment or the installment and interest up to date.

(2) The certified copy of the resolution of the council with reference to such payment, withdrawal, and reinstatement, filed with the county treasurer, is authority for the county treasurer to cancel and withdraw the delinquent special assessment or installment.

(3) The withdrawal and reinstatement may be made at any time before or after sale of the property for delinquent taxes and before a tax deed therefor is executed.

History: En. Subd. (e), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.4, R.C.M. 1935; R.C.M. 1947, 11-2237; amd. Sec. 11, Ch. 251, L. 1979.

7-12-4185. Payment of tax under protest — action to recover. (1) When any tax levied and assessed under any of the provisions of this part and part 42 is deemed unlawful by the party whose property is thus taxed or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest to the city or county treasurer, as the case may be.

(2) Thereupon, such party so paying or his legal representative may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid or against the city in whose behalf the same was collected to recover such tax or any portion thereof so paid under protest. Any action instituted to recover any tax paid under protest must be commenced within 60 days after the date of payment thereof.

(3) The tax so paid under protest shall be held by the city or county treasurer, as the case may be, until the determination of any action brought for the recovery thereof.

History: En. Sec. 29, Ch. 89, L. 1913; re-en. Sec. 5253, R.C.M. 1921; re-en. Sec. 5253, R.C.M. 1935; R.C.M. 1947, 11-2239.

7-12-4186. Procedure to correct assessment and relevy and collect tax. (1) Whenever, by reason of any alleged nonconformity to any law or ordinance or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the council may make all necessary orders and ordinances and may take all necessary steps to correct the same and to reassess and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance, or resolution relating thereto. The council may reassess and relevy the same with the same force and effect as an original levy.

(2) Whenever any apportionment or assessment is made and any property is assessed too little or too much, the same may be corrected and reassessed for such additional amount as may be proper or the assessment may be reduced even to the extent of refunding the tax collected.

(3) Any special tax upon reassessment or relevy shall, so far as is practicable, be levied and collected as the same would have been if the first levy had been enforced. Any provisions of any law or ordinance specifying a time when or order in which acts shall be done in a proceeding which may result in a special tax shall be taken to be subject to the qualifications of this part or part 42.

History: En. Sec. 28, Ch. 89, L. 1913; re-en. Sec. 5252, R.C.M. 1921; re-en. Sec. 5252, R.C.M. 1935; R.C.M. 1947, 11-2238(part).

7-12-4187. Certain errors not to invalidate assessments and liens. (1) When, under any of the provisions of this part or part 42, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

(2) Any mistake in the description of the property or the name of the owner shall not vitiate any liens created by this part or part 42 unless it is impossible to identify the property from the description.

History: (1)En. Sec. 24, Ch. 89,L. 1913; re-en. Sec. 5248, R.C.M. 1921; re-en. Sec. 5248, R.C.M. 1935; Sec. 11-2230, R.C.M. 1947; (2)En. Sec. 30, Ch. 89, L. 1913; re-en. Sec. 5254, R.C.M. 1921; re-en. Sec. 5254, R.C.M. 1935; Sec. 11-2240, R.C.M. 1947; R.C.M. 1947, 11-2230, 11-2240.

7-12-4188. Due date for district assessments. (1) All special assessments or installments of special assessments in cities and towns, duly and regularly levied by resolution according to law, shall be payable on or before 6 p.m. on November 30 of each year except as provided in subsection (2).

(2) The governing body of a municipality may provide by resolution that one-half of the payment on special assessments, or installments of special assessments may be deferred to no later than 5 p.m. on May 31 of the following year.

(3) In the event the same are not paid on or before said date, the same shall be subject to the same interest and penalties for nonpayment as are or may hereafter be provided by the laws of Montana for other delinquent taxes.

History: En. Subd. (d), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.3, R.C.M. 1935; R.C.M. 1947, 11-2236; amd. Sec. 1, Ch. 165, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 165, L. 1979, provided: "This act is effective on passage and approval." Approved March 20, 1979.

7-12-4189. Simple interest on assessments. (1) Upon all special assessments and taxes levied and assessed in accordance with any of the provisions of this part, simple interest shall be charged.

(2) The treasurer, in collecting such special assessment taxes if the same are payable in one installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment. If such assessment be payable in installments, the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid.

History: En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5245, R.C.M. 1921; re-en. Sec. 5245, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1937; amd. Sec. 16, Ch. 234, L. 1971; R.C.M. 1947, 11-2227.

7-12-4190. Payment of assessments in installments. The payment of assessments to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed 20 years, payments to be made in equal annual installments.

History: En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R.C.M. 1921; re-en. Sec. 5240, R.C.M. 1935; R.C.M. 1947, 11-2222(part).

7-12-4191. Assessments and certain other charges as liens. Any special assessment made and levied to defray the cost and expense of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied from and after the date of the passage of the resolution levying such assessment. The lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: **En. Sec. 23, Ch. 89, L. 1913; re-en. Sec. 5247, R.C.M. 1921; re-en. Sec. 5247, R.C.M. 1935; R.C.M. 1947, 11-2229.**

Part 42

Special Improvement Districts Continued

7-12-4201. Use of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in part 41 in any improvement district shall be paid for by special improvement district bonds or warrants. The city or town council shall provide for making payments for improvements in any special improvement district by the method provided in 7-12-4204 and 7-12-4205.

History: **Ap. p. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; Sec. 11-2231, R.C.M. 1947; Ap. p. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; Sec. 11-2232, R.C.M. 1947; R.C.M. 1947, 11-2231(part), 11-2232(part).**

7-12-4202. Form of bond or warrant. Such bonds or warrants shall be drawn in substantially the following form:

District No. ....
United States of America
State of Montana
Warrant or Dollars
(Bond No. ....) $........
Interest at the rate of ....% per annum, payable semiannually.
Special Improvement District Coupon Warrant or Bond
...., Montana
Issued by the city of ...., Montana

The treasurer of the city of ...., Montana, will pay to bearer the sum of .... dollars as authorized by resolution No. .... as passed on the .... day of ...., 19.., creating special improvement district No. .... for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of ...., Montana.

This warrant (or bond) bears interest at the rate of ....% per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable semiannually on the first day of .... in each year and on the first day of .... in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof and in the manner provided for the redemption of the same.

It is hereby certified and recited that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of ...., Montana, relating to the issuance thereof.

(seal)
Dated at ...., Montana, this .... day of ...., 19...
City of ...., Montana

By: ...., Mayor
...., City Clerk

Registered at the office of the city treasurer of ...., Montana, this .... day of ...., 19...

...., City Treasurer

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 3, Ch. 165, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 165, L. 1979, provided: "This act is effective on passage and approval." Approved March 20, 1979.

7-12-4203. Details relating to special improvement district bonds and warrants. (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable semiannually on January 1 and on the first day of July of each year unless the council prescribes other dates. Such warrants (or bonds) shall bear the signatures of the mayor and clerk and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk.

(2) Said bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period not to exceed 20 years.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945;

amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 4, Ch. 165, L. 1979.

Compiler's Comments

Effective date. Sec. 5, Ch. 165, L. 1979, provided: "This act is effective on passage and approval." Approved March 20, 1979.

7-12-4204. Procedure to issue bonds and warrants. (1) The city or town council shall sell bonds or warrants issued under the provisions of 7-12-4201, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash and for not less than the face value of such bonds or warrants, including interest thereon.

(2) The provisions of 7-7-4251 through 7-7-4254 with regard to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable thereto and not in conflict with the provisions of this section and 7-12-4205, shall apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling such bonds or warrants.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; R.C.M. 1947, 11-2232(part).

7-12-4205. Disposition of bond or warrant proceeds. The city or town council shall use the proceeds of such sale in making payment to the contractor or contractors. Such payment may be made either from time to time, on estimates made by the engineer in charge of such improvements for the city or town, or upon the entire completion of the improvements and the acceptance thereof by the city or town council.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; R.C.M. 1947, 11-2232(part).

7-12-4206. Redemption of bonds and warrants. (1) The warrants or bonds shall be redeemed by the treasurer when there is money in the special improvement district fund against which the warrants or bonds are drawn, on presentation of the coupons belonging thereto, and any money remaining shall be applied to the payment of the principal and the redemption of the warrants or bonds in the order of their registration.

(2) Whenever there is any money in any special improvement district fund after paying the interest on the warrants or bonds drawn against the fund, the treasurer shall call in for payment outstanding warrants or bonds which, together with the interest thereon to the date of redemption, will equal the amount of the fund on that date. The date of redemption shall be fixed by the treasurer and may not be less than 10 days after the date of publication or of service of notice, and on the date so fixed, interest ceases. The treasurer shall give notice by publication once in a newspaper published in the city or, at the option of the treasurer, by written notice to the holders of the warrants or bonds, if their addresses are known, of the number of warrants or bonds and the date on which payment will be made.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945;

amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 12, Ch. 251, L. 1979.

7-12-4207. Investment of interest and sinking fund money. (1) The governing body of a city in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank insured by the federal deposit insurance corporation or in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn.

History: En. Sec. 1, Ch. 45, L. 1965; R.C.M. 1947, 11-2288(part).

7-12-4208 through 7-12-4220 reserved.

7-12-4221. Creation of special improvement district revolving fund. The council or commission of any city or town which has heretofore created or may hereafter create any special improvement district or districts for any purpose may in its discretion as to such district or districts created prior to February 25, 1929, and shall as to such district or districts created after February 25, 1929, create, establish, and maintain by ordinance a fund to be known and designated as the special improvement district revolving fund in order to secure prompt payment of any special improvement district bonds or sidewalk, curb, and alley approach warrants issued in payment of improvements made therein and the interest thereon as it becomes due.

History: En. Sec. 1, Ch. 24, L. 1929; re-en. Sec. 5277.1, R.C.M. 1935; amd. Sec. 1, Ch. 255, L. 1971; R.C.M. 1947, 11-2269.

7-12-4222. Sources of money for revolving fund. (1) For the purpose of providing funds for such revolving fund the city or town council:

(a) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the city or town such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered and shall be loans from such general fund to the revolving fund; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund; such levy, together with such transfer, not to exceed in any one year 5% of the principal amount of the then-outstanding special improvement district bonds or sidewalk, curb, and alley approach warrants.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-4223 shall by order of the council be transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants have been fully paid, all money remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund.

History: (1)En. Sec. 2, Ch. 24, L. 1929; re-en. Sec. 5277.2, R.C.M. 1935; amd. Sec. 2, Ch. 255, L. 1971; Sec. 11-2270, R.C.M. 1947; (2)En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; Sec. 11-2272, R.C.M. 1947; R.C.M. 1947, 11-2270, 11-2272(part).

7-12-4223. Loans from revolving fund to meet payments on bonds and warrants. Whenever any special improvement district bond or sidewalk, curb, and alley approach warrants or any interest thereon shall be due and payable and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund. Thereupon, such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

History: En. Sec. 3, Ch. 24, L. 1929; re-en. Sec. 5277.3, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971; R.C.M. 1947, 11-2271(1).

7-12-4224. Lien arising due to loan from revolving fund. Whenever any loan is made to any special improvement district fund or sidewalk, curb, and alley approach warrants from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district (whether delinquent or not) and on all money thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond or warrant for payment of which, or of interest thereon, such loan was made.

History: En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2272(part).

7-12-4225. Covenants to utilize revolving fund. (1) In connection with any public offering of special improvement district bonds or sidewalk, curb, and alley approach warrants, the city or town council may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available;

(b) to provide funds for such revolving fund pursuant to the provisions of 7-12-4222(1) by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by 7-12-4222(1).

(2) The undertakings and agreements referred to in subsection (1) shall be binding upon said city or town so long as any of said special improvement district bonds or sidewalk, curb, and alley approach warrants so offered or any interest thereon remain unpaid.

History: En. Sec. 3, Ch. 24, L. 1929; re-en. Sec. 5277.3, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971; R.C.M. 1947, 11-2271(2).

7-12-4226. Investment of surplus reserves. Surplus reserves not needed for immediate use may from time to time be invested in securities of the United States or certificates of deposit approved by the city council. The interest earned from such investments shall be placed to the credit of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2272(part).

7-12-4227. Utilization of excess money in revolving fund. Whenever there is an amount in the revolving fund in excess of the amount which the council deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the council may:

(1) by vote of all of its members at a meeting called for that purpose, order such excess or any part thereof transferred to the general fund of such city or town; or

(2) use such excess or any part thereof for the purchase of property at sales for delinquent taxes or assessments, or both, or property which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town.

History: **En. Sec. 5. Ch. 24, L. 1929; re-en. Sec. 5277.5, R.C.M. 1935; R.C.M. 1947, 11-2273(part).**

7-12-4228. Disposition of tax certificates and tax-sale property. (1) The council may sell any tax certificates issued on any sale or sales referred to in 7-12-4227(2). After acquiring title to property referred to in 7-12-4227, the city or town may lease such property, sell the same at public or private sale and make conveyance thereof, or otherwise dispose thereof as the interest of the city or town may require.

(2) All proceeds from such sales of tax certificates and from such leasing, sale, or other disposition of the property shall belong to and be paid into the revolving fund and be subject to transfer in whole or in part to the general fund by the vote of all the members of the council at a meeting called for that purpose as hereinbefore provided.

History: **En. Sec. 5. Ch. 24, L. 1929; re-en. Sec. 5277.5, R.C.M. 1935; R.C.M. 1947, 11-2273(part).**

7-12-4229 through 7-12-4240 reserved.

7-12-4241. Creation of supplemental revolving fund from parking meter revenue. Subject to the provisions of 7-12-4242, a city or town may create, establish, and maintain a supplemental revolving fund out of the net revenues of parking meters to secure prompt payment of principal of and interest on special improvement district bonds issued under the provisions of 7-12-4241 through 7-12-4258 for improvements undertaken pursuant to this part and part 41 for the following purposes: for paving, repaving, macadamizing, remacadamizing, surfacing, resurfacing, oiling, reoiling, graveling, regraveling, piling, repiling, capping, recapping, grading, or regrading one or more streets, alleys, avenues, or other public places or ways in said city or town and/or constructing therein curbs or gutters or for the opening or widening of any street, avenue, alley, or other public way.

History: **En. Sec. 1, Ch. 260, L. 1947; R.C.M. 1947, 11-2274(part).**

7-12-4242. Application of provisions relating to supplemental revolving fund. The provisions of 7-12-4241 through 7-12-4258 shall not be applicable to any improvement unless the council shall find that 80% or more in area of the total parcels to be assessed for such improvement have been improved by the erection of permanent buildings or structures thereon having a value greater than the value of such parcels without such improvements according to the last assessment roll.

History: En. Sec. 1, Ch. 260, L. 1947; R.C.M. 1947, 11-2274(part).

7-12-4243. Procedure to create and maintain supplemental revolving fund. (1) (a) A supplemental revolving fund may be created by ordinance, subject to the approval of a majority of the qualified electors voting upon the question at a general or special election.

(b) As used in 7-12-4241 through 7-12-4258, "qualified electors" shall mean registered electors of the municipality.

(2) The supplemental revolving fund shall be created and maintained solely from the net revenues of parking meters. The ordinance may pledge to said fund all or any part of the net revenues of parking meters which may be then owned or leased or rented or thereafter acquired by the city or town. Said ordinance shall contain such provisions in respect to the purchase, control, operation, repair, and maintenance of parking meters, including rates to be charged, and the application of the net revenues therefrom and the management and use of the supplemental revolving fund as the council shall deem necessary.

History: En. Sec. 2, Ch. 260, L. 1947; amd. Sec. 8, Ch. 158, L. 1971; R.C.M. 1947, 11-2275.

7-12-4244. Issuance of bonds based upon supplemental revolving fund — election. (1) At any time after the award of the contract for any of the improvements described in 7-12-4241 and prior to the issuance of bonds or warrants therefor under the provisions of 7-12-4201 through 7-12-4203, the council may by resolution determine that such improvement is of a character that bonds may be issued under 7-12-4241 through 7-12-4258 in lieu of bonds under 7-12-4201 through 7-12-4203, and may submit to the qualified electors of the city or town the question whether such bonds shall be issued.

(2) The proposal to issue bonds may be submitted at the same election as the proposal to create the supplemental revolving fund and must be approved by a majority of the qualified electors voting on the question.

History: En. Sec. 3, Ch. 260, L. 1947; R.C.M. 1947, 11-2276.

7-12-4245. Resolution for issuance of bonds. (1) Whenever the council has been authorized to issue bonds under 7-12-4241 through 7-12-4258, the council may by resolution determine to issue such bonds and provide for the guaranty thereof by the supplemental revolving fund.

(2) Such resolution shall fix the amount, maturity, and interest rate and provide for the sale of bonds in such manner as the council shall determine.

(3) The resolution providing for the issuance of bonds may also contain such reasonable covenants for the protection of the holders thereof as the council may determine.

History: En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part).

7-12-4246. Determination of cost of improvements. The governing body of the municipality in determining the cost of said improvement may include estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; cost of the parking meters; and interest which it is estimated will accrue during the construction period and for 6 months thereafter on money borrowed or which it is estimated will be borrowed for the special improvements for which bonds are issued.

History: **En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part).**

7-12-4247. Details relating to bonds. (1) The bonds may mature at one time, not exceeding the maximum maturity of the assessments to be levied for said improvement, or may mature in installments at various times during the term of said assessments, but in no event shall such bonds mature beyond 10 years from date thereof.

(2) Said bonds, as the council shall determine, shall be subject to redemption prior to maturity and may be payable at any suitable bank or trust company either within or without the state of Montana.

(3) The bonds issued under 7-12-4241 through 7-12-4258 shall be in substantially the form provided in 7-12-4201 through 7-12-4203, as modified by the provisions of 7-12-4241 through 7-12-4258.

History: **En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part).**

7-12-4248. Operation and use of supplemental revolving fund. (1) Money in the supplemental revolving fund shall first be loaned to the various district funds whose bonds are guaranteed under 7-12-4241 through 7-12-4258 to make up any deficiency in such funds.

(2) In event of any further deficiency in such funds, the money in the revolving fund created under 7-12-4221 through 7-12-4228 may be loaned to make good such deficiency pursuant to the provisions of those sections.

(3) In event that the deficit exceeds the money in the supplemental revolving fund, then the money in the revolving fund may be similarly loaned until the deficiency has been made good.

(4) The authorizing resolution may provide that bonds shall become due in accordance with a plan of redemption prior to the stated maturity date. Both revolving funds shall thereafter have concurrent liens on the unpaid assessments and the moneys in the improvement district fund for all such advances, provided that such advances shall not be returned so long as any principal or interest on bonds issued under 7-12-4241 through 7-12-4258 remains unpaid.

History: **En. Sec. 5, Ch. 260, L. 1947; R.C.M. 1947, 11-2278(part).**

7-12-4249. Meaning of term deficiency. A deficiency shall exist in any district fund whenever principal and interest is due and there is no money in the fund to pay the same.

History: **En. Sec. 5, Ch. 260, L. 1947; R.C.M. 1947, 11-2278(part).**

7-12-4250. Obligations of municipalities to bondholders. All agreements, conditions, covenants, or restrictions in the ordinance creating the supplemental revolving fund, in the resolution determining that the improvement is of a character for which bonds may be issued under 7-12-4241 through 7-12-4258, and in the resolution authorizing the issuance of bonds shall be binding upon the city or town and may not be thereafter altered or amended to the detriment of the rights of any bondholder so long as any of such bonds are outstanding.

History: **En. Sec. 6, Ch. 260, L. 1947; R.C.M. 1947, 11-2279(part).**

7-12-4251. Enforcement of bondholders' rights. The provisions of 7-12-4241 through 7-12-4258 and the rights granted under any ordinance or resolution enacted pursuant to these sections may be enforced by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

History: **En. Sec. 6, Ch. 260, L. 1947; R.C.M. 1947, 11-2279(part).**

7-12-4252. Judicial determination of validity of proceedings — petition. (1) Within 10 days after the adoption of the resolution providing for the issuance of bonds under 7-12-4241 through 7-12-4258, the council may file a petition in the district court of the judicial district wherein said city or town is located to determine the validity of the proceedings theretofore had relative to the issuance of said bonds, the creation of the supplemental revolving fund, and the levy of a special assessment.

(2) The petition shall set forth generally the facts in reference to the improvement, the creation of the supplemental revolving fund, and the issuance of bonds and shall have as exhibits thereto certified copies of the ordinances and resolutions and shall pray for confirmation of the proceedings and of the bond issue and the special assessments, if theretofore levied.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4253. Nature of court proceedings. The action provided for in 7-12-4252 shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by notice given as provided in 7-12-4254.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4254. Hearing on petition — notice. (1) Upon the filing of said petition, the district court or any judge thereof shall fix the time for hearing on said petition, which shall not be less than 15 days from the date of filing the petition in said court.

(2) The district court or any judge thereof shall order the clerk of the court to give notice of the filing of said petition and the date of hearing thereon by publication at least once a week for 2 calendar weeks in a newspaper published or of general circulation in the county where the city or town is situated and also by posting a written or printed copy thereof in at least three public places in each voting precinct of said city or town, the date of first publication and posting to be not less than 15 days prior to the date fixed for hearing.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4255. Contents of notice of hearing — protest. (1) The notice shall state the substance of the petition and the time and place for hearing and that any interested person or any person whose rights may be affected by the issuance or sale of the bonds or the levy of the special assessment, may, on or before the day fixed for the hearing on the petition, answer the petition and may appear at the hearing and contest the granting of the prayer of the petition and the entry of any order of confirmation pursuant thereto.

(2) Any person eligible to appear may enter his appearance in the proceedings and answer the petition and contest the granting of the prayer of

the petition, and all provisions of the code of civil procedure shall be applicable to the proceedings.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part); amd. Sec. 13, Ch. 251, L. 1979.**

7-12-4256. Decision of district court. (1) If upon the hearing the court shall find and determine that the requirements of 7-12-4241 through 7-12-4258 have been complied with and notice of the hearing duly given as required by law, it shall have power to examine and determine the regularity, legality, and validity of the proceedings relative to the issuance of the bonds and the levy of special assessments and the legality and validity of the bonds and the special assessment and may ratify, approve, and confirm the proceedings in whole or in part and enter its judgment or decree accordingly.

(2) If no appeal pursuant to 7-12-4257 is taken within the time provided for in 7-12-4257 or if the judgment or decree of the district court be affirmed upon such appeal, such judgment or decree shall be forever conclusive upon all the world as to the validity of the bonds and the special assessment, and the same shall never be called into question in any court of the state.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4257. Appeal from district court to supreme court. From any judgment or decree entered under 7-12-4256, an appeal may be taken to the supreme court at any time within 10 days from the entry of such judgment in the manner prescribed by the code of civil procedure governing appeals from the district court to the supreme court.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4258. Cost of court proceedings. The cost of the court proceedings may be apportioned between the parties at the discretion of the court.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part); amd. Sec. 14, Ch. 251, L. 1979.**

Part 43

Special Provisions for Special Improvement Lighting Districts

7-12-4301. Special improvement districts for lighting streets authorized. (1) The council of any city or town is authorized to:

(a) create special improvement districts embracing any street or streets or public highway therein or portions thereof and property adjacent thereto or property which may be declared by said council to be benefited by the improvement to be made for the purpose of lighting such street or streets or public highway;

(b) require not more than three-fourths and not less than one-fourth of the cost of installing and maintaining such lighting system to be paid by the owners of the property embraced within the boundaries of such districts; and

(c) assess and collect such portion of such cost by special assessment against said property.

(2) The governing body may create special lighting districts on any street or streets or public highway for the purpose of lighting them and assess the

costs for installation and maintenance to property abutting thereto and collect the costs by special assessment against the property.

History: (1)En. Sec. 1, Ch. 143, L. 1915; re-en. Sec. 5259, R.C.M. 1921; amd. Sec. 1, Ch. 143, L. 1927; re-en. Sec. 5259, R.C.M. 1935; Sec. 11-2245, R.C.M. 1947; (2)En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; Sec. 11-2201, R.C.M. 1947; R.C.M. 1947, 11-2201(8), 11-2245.

7-12-4302. Resolution of intention to create special improvement lighting district. (1) Before creating any special improvement lighting district in any such city or town for the purpose of lighting any street or streets or public highway or section thereof in accordance with the provisions of this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements to be made and an approximate estimate of the cost thereof, an approximate estimate of the cost of maintaining such lights and supplying electrical current therefor for the first year, and the proportion of such cost to be assessed against the property embraced within the district.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(1).

7-12-4303. Notice of resolution of intent to create lighting district. (1) Upon having passed the resolution required by 7-12-4302, the council must give notice of the passage of such resolution of intention. The notice of the passage of such resolution must be published for 5 days in a daily newspaper or in some one issue of a weekly newspaper in the city or town or, in case no newspaper be published in such city or town, then by posting for 5 days in three public places in the city or town. A copy of such notice shall be mailed to every person, firm, or corporation having property within the proposed district, at his last-known address, upon the same day such notice is first published or posted.

(2) Such notice must describe the general character of the improvement so proposed to be made, state the estimated cost thereof and the estimated cost of maintaining the lights and supplying the electrical current therefor within such district for the first year, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvement or the creation of such district. Such notice shall refer to the resolution on file in the office of the city clerk for a description of the boundaries.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(2).

7-12-4304. Protest against creation of lighting district. At any time within 15 days after the date of the first publication of the notice of passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both. Such notice must be in writing and be delivered to the clerk of the city council, who shall endorse thereon the date of its receipt by him.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(3).

7-12-4305. Consideration of protest. (1) At the next regular meeting of the city council after the expiration of the time within which said protests may be made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive. When the protest is against the proposed work and the cost thereof is to be assessed upon property embraced within the boundaries of the district and if the city council finds that such protest is made by the owners of a majority of the property embraced within the district to be assessed for the proposed work, no further proceedings shall be taken for a period of 6 months from the date when said protest was received by the city clerk of said city council.

(2) In determining whether or not sufficient protest has been filed in a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered the same as other property in the district.

(3) The city council may adjourn said hearing from time to time.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(4), (5).

7-12-4306. Resolution to create lighting district. When no protests have been delivered to the clerk of the city council within 15 days after the date of the first publication of the notice of the passage of the resolution of intention or when a protest shall have been found by the city council to be insufficient or shall have been overruled or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon, the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. Before ordering any of said proposed improvements, the city council shall pass a resolution creating the special improvement lighting district in accordance with the resolution of intention theretofore introduced and passed by the city council.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(6).

7-12-4307. Objections to irregular proceedings or manner of making improvements. (1) At any time within 60 days from the date of the award of any contract by a city or town council under the provisions of this part or at any time within 60 days from the date the council requires or instructs the street commissioner or any other official of the city or town to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets of said city or town to be procured and erected, any owner or other person having any interest in any lot or land liable to assessment who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous, or faulty or that his property will be damaged by the making of any improvements in the manner contemplated may file with the city clerk a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent his property will be damaged by the making of said improvements. The city clerk shall deliver the notice to the council.

(2) All objections to any act or proceeding or in relation to the making of said improvements not made in writing and in the manner at the time aforesaid and all claims for damage therefor shall be waived by such property owners, provided the notice of the passage of the resolution of intention has been actually published and the notices of improvements posted as provided in this part.

History: En. Sec. 3(a), Ch. 243, L. 1921; re-en. Sec. 5262, R.C.M. 1921; re-en. Sec. 5262, R.C.M. 1935; R.C.M. 1947, 11-2248.

7-12-4308. Operation of district. (1) The city or town council may:

(a) cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets to be procured and erected by contract, by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide; and

(b) after such lighting system has been installed in such way and manner as the council shall elect, cause, by contract, the lights to be maintained thereon and electrical current furnished therefor.

(2) The posts in any such district shall be of uniform size and character and shall be distributed uniformly upon the street or streets or public highway or section thereof to be lighted in any such district.

(3) The lights in each district shall be maintained by contract for such period of time and in such way or manner as the city or town council shall elect. The council shall not let a contract for a period to exceed 3 years.

History: (1), (2)En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; Sec. 11-2247, R.C.M. 1947; (3)En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; Sec. 11-2252, R.C.M. 1947; R.C.M. 1947, 11-2247(7), 11-2252(part).

7-12-4309. Record of expenses to be kept by city engineer. It shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district and certify the same to the city clerk.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part).

7-12-4310. Role of city clerk. It shall be the duty of the city clerk to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part).

7-12-4311. Termination of special improvement lighting district. If at any time after the creation of any special improvement lighting district, a petition shall be presented to the city or town council, signed by the owners or agents of more than three-fourths of the total amount of property embraced within the district, asking that the maintenance and operation of such special lighting system and the furnishing of electrical current therefor in such district be discontinued, the city or town council shall by resolution, provide for discontinuing the maintenance and operation of the lighting system. If the council shall have, prior to the presentation of such petition, entered into any contract for the maintenance and operation of such lighting system, such maintenance and operation shall not be discontinued until after the expiration of the contract.

History: En. Sec. 10, Ch. 143, L. 1915; re-en. Sec. 5269, R.C.M. 1921; amd. Sec. 5, Ch. 143, L. 1927; re-en. Sec. 5269, R.C.M. 1935; R.C.M. 1947, 11-2255.

7-12-4312 through 7-12-4320 reserved.

7-12-4321. Apportionment of costs. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps, and other suitable or necessary appliances for the purpose of lighting said streets or public highways and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, not less than one-fourth or more than three-fourths as shall be determined by the city or town council, shall be borne by the property embraced within said district.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(part).

7-12-4322. Choice in manner of making assessments. The city or town council, for the purpose of making the assessment, shall adopt one of the methods specified in 7-12-4323 or 7-12-4324.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(part).

7-12-4323. Assessment of costs — area option. (1) The city council shall assess the entire cost of such improvement against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) The council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(3) In order to apportion the cost of any of the improvements provided in this part between the corner lot and the inside lots of any block, the council may, in the resolution creating any district, provide that whenever any of the improvements provided in this part shall be along any side street or bordering or abutting upon the side of any corner lot of any block, the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(a).

7-12-4324. Assessment of costs — frontage option. (1) The city council shall assess the cost of the improvements against the entire district, each lot or parcel of land within the district bordering or abutting upon the streets whereon or wherein the improvement has been made to bear costs in proportion to the lineal feet abutting or bordering the streets.

(2) The council, in its discretion, may pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(b); amd. Sec. 15, Ch. 251, L. 1979.

7-12-4325. Incidental expenses considered as costs of improvements. The cost and expense connected with and incidental to the formation of any such district, including the cost of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection (including the compensation of the city engineer for work done by him); the cost of printing and advertising as provided in this part; and the preparation of assessment rolls shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part).

7-12-4326. Treatment of federal lands within lighting district. Whenever any lot, piece, or parcel of land belonging to the United States (or mandatory of the government) shall be included within the boundaries of the proposed special improvement lighting district declared by the city or town council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. The cost of said work or improvement which would have been assessed against said lots shall be paid by the city from its general fund.

History: En. Sec. 12, Ch. 143, L. 1915; re-en. Sec. 5271, R.C.M. 1921; amd. Sec. 6, Ch. 143, L. 1927; re-en. Sec. 5271, R.C.M. 1935; R.C.M. 1947, 11-2257.

7-12-4327. Assessment of costs of lighting district to certain lands lying outside of municipality. The city or town council may make assessments in the manner provided in 7-12-4301 on property abutting the street or highway and lying outside the boundaries of the city or town, as long as that portion of the street or public highway to be lighted is adjacent to the boundary line of the city or town, lies partially within the city or town, or extends from one point within the city or town to another point within the city or town.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(9).

7-12-4328. Resolution to provide for assessment of costs of installation. (1) It shall be the duty of the city or town council to ascertain the cost of installing such lighting system and, on or before the first Monday in October, to pass and finally adopt a resolution levying and assessing all of the property embraced within said district with not less than one-fourth or more than three-fourths of the entire cost of installing the same; each lot or parcel of land in said district to be assessed in accordance with the method adopted by the city council as provided in 7-12-4321 through 7-12-4324.

(2) Any such resolution shall contain a list in which shall be described each lot or parcel of land, either the total number of square feet of property contained therein or the total number of linear feet abutting the improvements as may be required to determine the total assessment in the district, and the amount levied against each lot or parcel of land set opposite.

(3) Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk.

History: En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).

7-12-4329. Notice of resolution for assessment of installation costs — hearing on resolution. (1) A notice, signed by the city clerk, stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining said lights and supplying electrical current therefor for the first year as determined by the city or town council is on file in his office subject to inspection for a period of 5 days shall be published at least once in a newspaper published in the city.

(2) Such notice shall state the time and place at which objections to the final adoption of such resolution shall be heard by the council. The time for such hearing shall not be less than 5 days after the publication of such notice.

History: En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).

7-12-4330. Hearing on resolution for assessment of installation costs. (1) At the time so fixed, the council shall meet and hear all such objections and for the purpose may adjourn from day to day and may modify such resolution in whole or in part.

(2) A copy of such resolution as finally adopted, certified by the city clerk, must be delivered within 2 days after its passage to the city treasurer.

History: En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).

7-12-4331. Lighting district fund established. All money derived from the collection of the assessments provided for in 7-12-4328 through 7-12-4330 shall constitute a fund to be known as the special improvement lighting district No. .... fund.

History: En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).

7-12-4332. Resolution to provide for assessment of maintenance costs. It shall be the duty of the city or town council to estimate, as nearly as practicable, the cost of maintaining such lights and furnishing electrical current therefor each year and the portion thereof to be assessed against the property embraced within the district and, before the first Monday in October, to pass and finally adopt a resolution levying and assessing said property within said district with an amount equal to the proportion of the cost of such maintenance and electrical current so determined to be especially assessed against said property.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4333. Procedure for resolution for assessment of maintenance costs. Said resolution levying and assessing said portion of the cost of maintenance and for furnishing electrical current therefor shall be prepared and certified to in the same manner as the resolution provided for in 7-12-4328 through 7-12-4330, and the same notice and hearing shall be given thereon. This resolution shall be adopted and certified and the assessment collected in the same manner, as nearly as may be, in the case of the resolution provided for in 7-12-4328 through 7-12-4331.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4334. Lighting district maintenance fund. All money derived from the collection of the assessment provided for in the resolution required by 7-12-4333 shall be paid into a fund known as the special improvement lighting district No. .... maintenance fund, the number of which shall correspond with the number of the lighting district, for the maintenance of and the supplying of current for which the tax is levied. Such fund shall be used to defray the expense of maintaining and furnishing electrical current for the lights in said district and for no other purpose.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4335. Change of boundaries of maintenance district. The city or town council shall have the power, not more than once in a year, to change by resolution the boundaries and number of any maintenance district, but such change of boundaries shall not affect indebtedness existing at the time of such change.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4336. Effect of mistake as to property ownership. When, under any of the provisions of this part, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: En. Sec. 8, Ch. 143, L. 1915; re-en. Sec. 5267, R.C.M. 1921; re-en. Sec. 5267, R.C.M. 1935; R.C.M. 1947, 11-2253.

7-12-4337. Incorporation of procedures to correct errors and omissions. All remedies, provisions, and means provided by existing laws or by the ordinances of any city availing itself of the provisions of this part which are for the correction of errors or omissions in the adoption of any resolution or proceeding or in the levy of any assessment or for the collection thereof, for the enforcement of any such levy by the sale of the property against which the assessment is made, or for the redemption of the property from such sale or which are otherwise applicable to the administration of this part are available in the administration of this part as if such remedies, provisions, and means were contained in this part.

History: En. Sec. 9, Ch. 143, L. 1915; re-en. Sec. 5268, R.C.M. 1921; re-en. Sec. 5268, R.C.M. 1935; R.C.M. 1947, 11-2254; amd. Sec. 16, Ch. 251, L. 1979.

7-12-4338. Assessments to have effect of lien. Any special assessment levied and made for any purpose aforesaid, together with all costs and penalties, shall constitute a lien upon and against the property upon which assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same. The lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest, or otherwise as provided by law.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(3).

7-12-4339 and 7-12-4340 reserved.

7-12-4341. Financing of lighting district improvements. All costs and expenses incurred in the construction of the improvements specified in this part shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance, drawn against a fund to be known as the special improvement lighting district No. .... fund.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R.C.M. 1921; re-en. Sec. 5263, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971; R.C.M. 1947, 11-2249(part).

7-12-4342. Details relating to lighting district bonds and warrants. (1) Said warrants or bonds shall be in the denomination of $100 or fractions or multiples thereof and may be issued in installments.

(2) Such warrants or bonds shall be redeemed by the treasurer when there is money available therefor in the fund against which said warrants or bonds are issued and shall bear interest from the date of registration thereof until called for redemption or paid in full, interest to be payable annually on January 1 of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk.

(3) Such warrants or bonds may extend over a period not to exceed 8 years.

(4) The requirements of this section and 7-12-4341 shall apply to all special improvement lighting districts, including those now in the process of formation or to be formed hereafter.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R.C.M. 1921; re-en. Sec. 5263, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971; R.C.M. 1947, 11-2249(part).

Part 44

Special Provisions for Street Sprinkling Districts

7-12-4401. Street sprinkling authorized. Whenever the council of any city or town desires to sprinkle all or any part of the streets or avenues of its city or town with water, oil, salt, or any other dust palliative, as provided in this part, it shall provide by ordinance a method of doing said work and of paying for the same under the following restrictions and regulations.

History: En. Sec. 24, p. 218, L. 1897; re-en. Sec. 3390, Rev. C. 1907; re-en. Sec. 5272, R.C.M. 1921; amd. Sec. 1, Ch. 97, L. 1927; re-en. Sec. 5272, R.C.M. 1935; R.C.M. 1947, 11-2263.

7-12-4402. Creation of sprinkling districts. A resolution dividing the whole or any part of their city or town into sprinkling districts, to be known and designated by number, shall be passed. Said resolution shall plainly define the boundaries of the several districts or enumerate the streets, alleys, and public places or any part thereof constituting the different districts.

History: En. Sec. 25, p. 218, L. 1897; re-en. Sec. 3391, Rev. C. 1907; re-en. Sec. 5273, R.C.M. 1921; re-en. Sec. 5273, R.C.M. 1935; R.C.M. 1947, 11-2264.

7-12-4403. Alteration of sprinkling districts. When once defined, sprinkling districts shall not be changed during the same calendar year but may be changed by resolution the following year or any year thereafter.

History: En. Sec. 26, p. 218, L. 1897; re-en. Sec. 3392, Rev. C. 1907; re-en. Sec. 5274, R.C.M. 1921; re-en. Sec. 5274, R.C.M. 1935; R.C.M. 1947, 11-2265.

7-12-4404. Manner of providing sprinkling services. The sprinkling in districts so established may be done by contract or by forces employed by the city or town or by both, in such manner as the council may elect.

History: En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R.C.M. 1921; re-en. Sec. 5275, R.C.M. 1935; R.C.M. 1947, 11-2266(part).

7-12-4405. Improvements within sprinkling districts — ordinance required. (1) Cities and towns are hereby authorized and empowered to prepare and improve streets, avenues, and alleys within the sprinkling districts so that the sprinkling and applying of water, oil, and salt or any other dust palliative or preventive will be of a durable and continuing benefit. The city or town council shall provide by ordinance a method or methods of doing said work and improvements.

(2) Cities and towns are authorized to maintain the work and improvements made under subsection (1).

(3) At least 15 days must elapse between the day on which said proposed ordinance is introduced and the day on which final action thereon is taken.

History: (1)En. Sec. 1, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.1, R.C.M. 1935; Sec. 11-2258, R.C.M. 1947; (2)En. Sec. 3, Ch. 12, Ex. L. 1933; re-en Sec. 5271.3, R.C.M. 1935; Sec. 11-2260, R.C.M. 1947; (3)En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; Sec. 11-2262, R.C.M. 1947; R.C.M. 1947, 11-2258, 11-2260, 11-2262(part).

7-12-4406. Notice of ordinance for improvements. The city or town clerk must give notice of the introduction of such proposed ordinance and of the time it will be up for passage:

(1) by publication three times in a daily newspaper or a newspaper printed and published every day except Sunday or in a weekly newspaper for two successive issues in such city or town; or

(2) if there be no such newspaper, then by posting for at least 10 days in three public places in each of the wards of said city or town.

History: En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; R.C.M. 1947, 11-2262(part).

7-12-4407. Protest against ordinance for improvements. If 40% or more of the abutting property owners protest in writing to said city or town council against the passage of said proposed ordinance, then no further action shall be taken thereon and the same shall lapse.

History: En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; R.C.M. 1947, 11-2262(part).

7-12-4408 through 7-12-4420 reserved.

7-12-4421. Choice in manner of making assessments. The assessments for the costs and expenses of sprinkling streets shall be made against all of the property embraced within each sprinkling district by one of the three methods provided in 7-12-4422 through 7-12-4424.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(part).

7-12-4422. Assessment of costs — area option. Each lot or parcel of land within such district shall be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(2).

7-12-4423. Assessment of costs — frontage option. Each lot or parcel of land within such district abutting upon some street upon which sprinkling is done shall be assessed for that part of the whole cost which its street frontage bears to the street frontage of the entire district.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(1).

7-12-4424. Assessment of costs — combined area-frontage option. A portion of the total cost to be assessed in each sprinkling district may be assessed against the several lots or parcels of land within the district by the method provided in 7-12-4422 on a frontage basis and the remainder of such cost by the method provided in 7-12-4423 on an area basis. The proportion to be assessed in each district by each such method shall be determined and fixed by the city or town council.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(3).

7-12-4425. Resolution for assessment of costs of sprinkling. (1) It shall be the duty of said council to estimate, as near as practicable, the cost of sprinkling in such districts so established for the season; and before the first Monday in November of each year, they shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to not less than 75% of the entire cost of said work, exclusive of the cost of sprinkling parks and public places.

(2) The resolution levying the assessment to defray the cost of sprinkling shall contain a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof if known, and the amount levied thereon set opposite.

(3) Such resolution shall be kept on file in the office of the city clerk.

History: (1)En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R.C.M. 1921; re-en. Sec. 5275, R.C.M. 1935; Sec. 11-2266, R.C.M. 1947; (2),

(3)En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; Sec. 11-2268, R.C.M. 1947; R.C.M. 1947, 11-2266(part), 11-2268(part).

7-12-4426. Notice of resolution for assessment of sprinkling costs. (1) A notice, signed by the city clerk, stating that the resolution levying a special assessment to defray the cost of sprinkling in the several districts is on file in his office and subject to inspection for a period of 5 days, shall be published at least once in a newspaper published in the city or town.

(2) The notice shall state the time and place at which objections to the final adoption of the resolution will be heard by the council. The time for the hearing shall be not less than 5 days after the publication of the notice.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; R.C.M. 1947, 11-2268(part); amd. Sec. 17, Ch. 251, L. 1979.

7-12-4427. Hearing on resolution for assessment of sprinkling costs. (1) At the time so set, the council shall meet at their regular place of meeting and hear all objections which may be made to such assessment or any part thereof and may adjourn from time to time for that purpose and may by resolution modify such assessment in whole or in part.

(2) A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer on or before the first Monday in October, and such assessment shall be placed upon the tax roll and collected in the same manner as other taxes.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; R.C.M. 1947, 11-2268(part).

7-12-4428. Assessment of costs of improvements and maintenance of improvements. Cities and towns are authorized to assess the cost of the work, improvements, and maintenance authorized by 7-12-4405 against the property in such sprinkling districts in the manner and as provided in 7-12-4421 through 7-12-4424 to meet the payments required to be made each year.

History: En. Sec. 4, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.4, R.C.M. 1935; R.C.M. 1947, 11-2261.

7-12-4429. Financial assistance from the United States. Cities and towns are authorized to:

(1) enter into suitable agreements with the United States of America for loans of money and for receiving financial assistance to do the work and improvements contemplated by 7-12-4405; and

(2) provide for the repayment thereof by yearly payments from funds derived from such sprinkling districts created under 7-12-4405, apportioned over a period of time not exceeding 20 years.

History: En. Sec. 2, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.2, R.C.M. 1935; R.C.M. 1947, 11-2259.

Part 45

Special Provisions for Street Parking Districts

7-12-4501. Abandonment of street parking improvement district — resolution. Whenever it is deemed to the best interest of a city or town or the inhabitants thereof by the mayor and council of such city or town, the mayor and council are authorized to abandon the maintenance of any street parking improvement district established in such city or town by the passage of a resolution of intention to abandon the same.

History: **En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).**

7-12-4502. Notice of intention to abandon district. (1) After the passage of the resolution provided for in 7-12-4501, the city or town clerk shall give notice of such intention to abandon by one publication in a newspaper published in such city or town at least 10 days prior to the passage of a resolution abandoning the same. In case there is no publication of a newspaper in such city or town, then notice shall be given by the posting of a notice of such intention to abandon in three places within such district to be abandoned.

(2) Said notice shall specify the boundaries of such district to be abandoned, the date of the passage of the resolution of intention to abandon, and the date set for the passage of the resolution of abandonment and that unless 40% of the owners in the district file written protest with the clerk of such city or town before the passage of the resolution, the same will be passed. Said notice shall also set forth, when applicable, that it shall be the duty of the owners of the property abutting on the street parking district involved to maintain the same after such abandonment.

History: **En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).**

7-12-4503. Protest to abandonment of district. Unless 40% of the property owners owning property abutting the district file written protests against the abandonment by the date set for the passage of the resolution of abandonment, the council shall pass a resolution declaring the district abandoned.

History: **En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part); amd. Sec. 18, Ch. 251, L. 1979.**

7-12-4504. Responsibility and liability of property owners following abandonment of district. (1) Following passage of the resolution of abandonment, it shall be the duty of all property owners owning property abutting said district to maintain such portion thereof abutting their property.

(2) Such abandonment, however, shall not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against said district prior to the date of abandonment.

History: **En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).**

CHAPTER 13

UTILITY SERVICES

Part 1 — Metropolitan Sanitary and/or Storm Sewer District

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Part 1

Metropolitan Sanitary and/or Storm Sewer District

7-13-101. Authorization to create metropolitan sanitary and/or storm sewer districts. Whenever the public convenience and necessity may require, in order to construct sanitary and/or storm sewer systems within any county, which sanitary and/or storm sewer systems would serve the inhabitants of any county as well as the inhabitants of any city or town within said county, the board of county commissioners, with the approval of the city or town council, may create metropolitan sanitary and/or storm sewer districts.

History: En. Sec. 1, Ch. 185, L. 1957; R.C.M. 1947, 16-4401(part).

7-13-102. Resolution of intention to create metropolitan sanitary and/or storm sewer district. (1) Before creating any metropolitan sanitary and/or storm sewer district, the board of county commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate:

(a) the proposed name of such district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands to be included within said district, giving the boundaries thereof;

(d) the general character of the sanitary and/or storm sewer system and its proposed location;

(e) the name of the engineer who is to have charge of the work; and

(f) the estimated cost thereof.

History: En. Sec. 1, Ch. 185, L. 1957; R.C.M. 1947, 16-4401(part).

7-13-103. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the metropolitan sanitary and/or storm sewer district, or both, and to refer to the resolution of intention for further particulars.

History: En. Sec. 5, Ch. 185, L. 1957; R.C.M. 1947, 16-4405.

7-13-104. Transmittal of resolution of intention to municipalities. Upon passage of such resolution of intention, the board of county commissioners shall transmit a copy of the same to the executive head of any city or town within the proposed district for consideration by such city or town council.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).

7-13-105. Concurrence required for further proceedings. If the city or town council does not concur in the resolution of the board of county commissioners, the board shall have no authority to proceed further with the creation of the district.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).

7-13-106. Resolution of concurrence. If the city or town council shall by resolution concur in the resolution of the board of county commissioners, a copy of the resolution of concurrence shall be transmitted to the board.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).

7-13-107. Notice of resolution of intention upon concurrence — hearing. (1) If the city or town council concurs in the resolution of the board of county commissioners, the board must give notice of the passage of its resolution of intention and of the concurrence therein by the city or town council.

(2) The notice must be published for 10 consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created. The board shall also cause a copy of such notice to be posted in three public places within the boundaries of such special improvement district. A copy of such notice shall be mailed to every person, firm, or corporation or the agent of such person,

firm, or corporation owning property within the proposed district, at his last known place of residence, upon the same day such notice is first published or posted.

(3) Such notice must describe the general character of the improvement or improvements so proposed to be made, state the estimated cost thereof, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of such improvements or the creation of such district. The notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: **En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).**

7-13-108. Right to protest. (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work.

(2) Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him.

History: **En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).**

7-13-109. Sufficient protest to bar proceedings. If the protest against the proposed work is made by the owners of more than 50% of the area in the proposed district, no further proceedings shall be taken by the board of county commissioners.

History: **En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).**

7-13-110. Hearing on protest. (1) At the next regular meeting of the board of county commissioners after the expiration of the time within which said protest may be made, the board shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district.

(3) The board may adjourn said hearing from time to time.

History: **En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).**

7-13-111. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the metropolitan sanitary and/or storm sewer district in accordance with the resolution of intention theretofore introduced and passed by the board.

(2) The board shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest shall have been found by said board to be insufficient;

(c) when a protest shall have been overruled.

History: **En. Sec. 4, Ch. 185, L. 1957; R.C.M. 1947, 16-4404.**

7-13-112. County commissioners to administer district. (1) The board of county commissioners shall be ex officio commissioners of the metropolitan sanitary and/or storm sewer district formed under the provisions of this part and shall have sole and complete jurisdiction over all drainage structures and sewage treating plants which are now or may be hereafter built and situated within said district. The commission shall be responsible for the proper functioning and maintenance thereof.

(2) The commission shall be responsible for the condition and maintenance of all publicly owned streets, alleys, land, parks, or other thoroughfares within the boundaries of such district insofar as such may be affected by the construction or maintenance of the structures under control and jurisdiction of such district.

History: **En. Sec. 11, Ch. 185, L. 1957; R.C.M. 1947, 16-4411.**

7-13-113. Change of boundaries — limitations. (1) The county commissioners may by resolution make such changes in the boundaries of a district as they shall deem reasonable and proper but may not delete any portion of the proposed area which will create an island of included or excluded lands.

(2) They may not delete any portion of the proposed area which is contributing or may reasonably be expected to contribute to the pollution of any watercourse or body of water in the proposed area.

(3) For the purpose of subsection (2), it will be conclusively presumed that an area which is within 1,500 feet of a proposed or existing sanitary sewer is contributing to the pollution of a watercourse in the proposed area.

History: **En. 16-4414, 16-4415 by Secs. 1, 2, Ch. 165, L. 1965; R.C.M. 1947, 16-4414(part), 16-4415.**

7-13-114. Applicable provisions of laws relating to rural improvement districts. The provisions of 7-12-2101, 7-12-2106, 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), and 7-12-2169 through 7-12-2174 pertaining to the powers and duties of the county commissioners in rural improvement districts shall likewise apply under the provisions of this part.

History: **En. Sec. 13, Ch. 185, L. 1957; R.C.M. 1947, 16-4413.**

7-13-115. Adequate records to be maintained. The records of the district pertaining to the collection of the operation and maintenance tax levied hereunder and the records of the district pertaining to expenditures for construction of the system shall be kept and maintained in the office of the treasurer of the county wherein the district is located. These records shall include but not be limited to a list of individual property which is delinquent in payment, together with the name of the owner or owners thereof.

History: **En. Sec. 5, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.4.**

7-13-116 through 7-13-120 reserved.

7-13-121. Assessment of costs. To defray the cost of installing and maintaining either sanitary or storm sewer systems under the provisions of this part, the board of county commissioners shall adopt the following method of assessment:

(1) The board shall assess the entire cost of the improvements against the entire metropolitan sanitary district.

(2) Each lot or parcel of land assessed in such district is to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

History: **En. Sec. 7, Ch. 185, L. 1957; R.C.M. 1947, 16-4407.**

7-13-122. Status of federal property within metropolitan sanitary and/or storm sewer district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the board shall in the resolution of intention declare that the said lots, pieces, or parcels of land shall be omitted from the assessment to be made thereto to cover the cost and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the county from its general fund.

History: **En. Sec. 6, Ch. 185, L. 1957; R.C.M. 1947, 16-4406.**

7-13-123. Restriction on assessments following change of boundaries. Nothing in 7-13-113, however, shall permit the assessment of the cost of any such system against the lands remaining in the district after any such boundary change at a rate per square foot higher than the rate per square foot which would have been so assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in said resolution of intention unless a new resolution of intention to recreate the district is adopted and a hearing held thereon upon notice as required for the original resolution of intention.

History: **En. 16-4414 by Sec. 1, Ch. 165, L. 1965; R.C.M. 1947, 16-4414(part).**

7-13-124. Resolution to assess and levy tax for making improvements. (1) To defray the cost of making improvements in any special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all property in the district created for such purpose by using for a basis for such assessment the method provided for by this part.

(2) Such resolution shall contain a description of each lot or parcel of land, with the name of the owner if known, and the amount of each partial payment when made and the day when the same shall become delinquent.

(3) Such resolution, signed by the chairman of the board, shall be kept on file in the office of the county clerk.

History: **En. Secs. 8, 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4408(part), 16-4409(part).**

7-13-125. Term of assessment for costs of construction. The payment of the assessment to defray the cost of constructing any improvements in said metropolitan sanitary and/or storm sewer district may be spread over a term of not to exceed 20 years, payment to be made in equal installments.

History: **En. Sec. 8, Ch. 185, L. 1957; R.C.M. 1947, 16-4408(part).**

7-13-126. Notice of resolution to assess and levy tax for making improvements — protest. (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk and is subject to inspection, shall be published in at least one publication in a newspaper published nearest to where the special improvement is to be made.

(2) Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners.

History: **En. Sec. 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4409(part).**

7-13-127. Hearing on protest. (1) The time for the hearing on protest shall be not less than 5 days after the publication of the notice required by 7-13-126.

(2) At the time so fixed, the board of county commissioners shall meet and hear all such objections and for that purpose may adjourn from day to day. The board may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer 2 days after its passage.

History: **En. Sec. 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4409(part).**

7-13-128. Assessments and other charges as lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the passage of the resolution levying such assessment. The lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

History: **En. Sec. 10, Ch. 185, L. 1957; R.C.M. 1947, 16-4410.**

7-13-129 through 7-13-140 reserved.

7-13-141. Charges for services. (1) The board of county commissioners shall have full power and authority by ordinance or resolution to fix and establish just and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated by, controlled by, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this part.

(2) Such rates, charges, and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters.

History: **En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969; R.C.M. 1947, 16-4416(part).**

7-13-142. Authorization to utilize federal funds. The board of county commissioners is hereby authorized to apply for and receive from the federal government, on behalf of said metropolitan sanitary and/or storm sewer district, any money that may be appropriated by the congress for aiding in local public works projects. Likewise, the board may borrow from the federal goverment any funds available for assisting in the planning or financing of local public works projects and repay the same out of the money received from the tax levy provided for in this part.

History: En. Sec. 12, Ch. 185, L. 1957; amd. Sec. 16, Ch. 455, L. 1975; R.C.M. 1947, 16-4412(part).

7-13-143. Charges for costs when federal funding is sought. Notwithstanding any other section of this part or limitation imposed therein, when the board has applied pursuant to 7-13-142, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of treatment works to pay that portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial user's wastes.

History: En. Sec. 12, Ch. 185, L. 1957; amd. Sec. 16, Ch. 455, L. 1975; R.C.M. 1947, 16-4412(part).

7-13-144. Resolution to establish service charges — hearing — limitations and tax levy. The board of county commissioners shall have authority, by resolution and after public hearing:

(1) to fix and establish the sewer rates, charges, and rentals at amounts sufficient in each year, not to exceed $7 per unit user per year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) to fix and establish an additional charge, not to exceed $7 per unit user per year, for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and

(3) to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in 7-13-151 through 7-13-156.

History: En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969; R.C.M. 1947, 16-4416(part).

7-13-145. Hearing and notice on tax levy for operation and maintenance. (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the county commissioners will hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing and the date and place thereof will be given by the commissioners by publication in a newspaper published and circulated in the county wherein the district is located once a week for 3 consecutive weeks. The notice shall also be posted in three public places within the district.

History: En. Sec. 2, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.1.

7-13-146. Preparation and filing of district budget. (1) Not less than 30 days prior to the date of the public hearing on the resolution, the county commissioners shall prepare and file in the office of the clerk and recorder of the county wherein the district is located and in the office of the board of county commissioners a complete, detailed budget for operation and maintenance of the system, showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year which the levy is assessed.

(2) The provisions of law relating to county budgets and expenditures must be complied with by a metropolitan sanitary and/or storm sewer district.

History: En. Secs. 3, 4, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.2, 16-4416.3.

7-13-147 through 7-13-150 reserved.

7-13-151. Authorization for reserve fund. The board of county commissioners may, in order to secure prompt payment of any metropolitan sanitary and/or storm sewer district bonds issued in payment of the cost of improvements in and for the district and the interest thereon as it becomes due, create, establish, and maintain by resolution a fund, to be designated as the "reserve fund", for each issue of such bonds.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-152. Sources of money for reserve fund. (1) For the purpose of providing money for the reserve fund, the board of county commissioners may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district such amount or amounts as may be deemed necessary or as may be agreed with the holders of the bonds.

(2) Whenever there shall be money in the bond fund which is not required for payment of any bond of the district or interest thereon, so much as may be necessary to pay the loan referred to in 7-13-154 shall, by order of the board, be transferred to the reserve fund.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-153. Transfers to reserve fund considered as loans. The amount or amounts transferred under 7-13-152 shall be deemed and considered as loans from the operation and maintenance fund to the reserve fund.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-154. Loans from reserve fund to bond fund as lien. (1) Whenever any loan is made to any bond fund from the reserve fund, the reserve fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments; on all unpaid assessments and installments of assessments on the district, whether delinquent or not; and on all money thereafter coming into the bond fund to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond for payment of which or of interest thereon such loan was made.

(2) If, after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund,

there still remains a debt from the district to the reserve fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the reserve fund.

History: **En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).**

7-13-155. Limitation on repayment of loan to reserve fund. Nothing in 7-13-151 through 7-13-156 permits the repayment of any loan to the reserve fund at any time unless all interest theretofore accrued on the bonds has been fully paid and all principal theretofore agreed to be paid in accordance with such redemption schedule as may be provided in the resolution or resolutions authorizing such bonds has been paid.

History: **En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part); amd. Sec. 19, Ch. 251, L. 1979.**

7-13-156. Covenants to utilize and maintain reserve fund. (1) In connection with the issuance of metropolitan sanitary and/or storm sewer district bonds, the board of county commissioners may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds, in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that money is available; and

(b) to provide money for the reserve fund pursuant to the provisions of 7-13-141 and 7-13-144 by establishing and collecting rates, charges, and rentals for sewer services and benefits in amounts sufficient to provide net revenues in excess of the current costs of operation and maintenance of the system, sufficient to maintain such balance in the reserve fund as the board may agree to and undertake.

(2) The undertakings and agreements authorized by subsection (1) shall be binding upon the county as long as any of said bonds so offered or any interest thereon remains unpaid.

History: **En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).**

Part 2

Refuse Disposal Districts

7-13-201. Findings and purpose. (1) The improper storage, collection, and disposal of refuse is hereby declared to be a significant hazard to the health, safety, and welfare of Montana citizens and can cause the spread of disease, air pollution, and water pollution. Refuse can be an excellent habitat for disease vectors such as rats and insects.

(2) Therefore, it is deemed necessary to provide for the creation of refuse disposal districts to control storage, collection, and disposal of refuse.

History: **En. Sec. 1, Ch. 71, L. 1969; R.C.M. 1947, 69-6001.**

7-13-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the board of directors as provided for in 7-13-213 and 7-13-241.

(2) "Commissioners" means the board of county commissioners.

(3) "Family residential unit" means the residence of a single family.

(4) "Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(5) "Refuse disposal district" means an area established with definite boundaries for the purpose of collecting and disposing of all refuse created in said district.

History: **En. Sec. 2, Ch. 71, L. 1969; amd. Sec. 1, Ch. 136, L. 1971; R.C.M. 1947, 69-6002.**

7-13-203. Authorization to create refuse disposal district. (1) Whenever it becomes necessary, the commissioners may create a refuse disposal district for the purpose of collection and/or disposal of refuse.

(2) Cities and towns may be included in the district if approved by the city and town councils.

History: **En. Sec. 3, Ch. 71, L. 1969; R.C.M. 1947, 69-6003(part).**

7-13-204. Resolution of intention to create refuse disposal district. (1) Before creating any refuse disposal district, the commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate:

(a) the proposed name of such district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands of said district, giving the boundaries thereof;

(d) the general character of the collection service;

(e) the estimated cost thereof.

History: **En. Sec. 3, Ch. 71, L. 1969; R.C.M. 1947, 69-6003(part).**

7-13-205. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvement, it shall be sufficient to briefly describe the work of the refuse disposal district and to refer to the resolution of intention for further particulars.

History: **En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973; R.C.M. 1947, 69-6006(part).**

7-13-206. Transmittal of resolution of intention to municipalities. Upon passage of such resolution of intention, the commissioners shall transmit a copy of the same to the executive head of any incorporated city or town within the proposed district for consideration by such city or town council.

History: **En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(part).**

7-13-207. Concurrence or nonconcurrence by municipality. (1) If the city or town council shall by resolution concur in the resolution of the commissioners, a copy of the resolution of concurrence shall be transmitted to the commissioners.

(2) If the incorporated city or town council does not concur in the resolution of the commissioners, the commissioners shall have no authority to include said city or town in the district, but may continue to develop the district, excluding said city or town.

History: **En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(part).**

7-13-208. Notice of resolutions of intention and concurrence — hearing. (1) The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and a notice describing the general characteristics of the collection system and estimated costs, designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice shall be published in the newspaper published nearest to the place where the proposed district is to be created for 10 consecutive days in a daily newspaper or in two issues of a weekly newspaper and posted in three public places within the boundaries of the proposed district.

(3) A copy shall be mailed by first-class mail to every person, firm, or corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published.

History: En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(2).

7-13-209. Right to protest. (1) At any time within 30 days after the date of the first publication of the notice provided for in 7-13-208, any owner of property liable to be assessed for said service may make written protest against the proposed service.

(2) Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him.

History: En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part).

7-13-210. Hearing on protest. (1) At the next regular meeting of the commissioners after the expiration of the time within which the protest provided for in 7-13-209 may be made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district. The commissioners may include commercial and industrial establishments in said district.

(3) The commissioners may adjourn said hearings from time to time.

History: En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part).

7-13-211. Sufficient protest to bar proceedings. (1) If the protest against the proposed service is made by the owners of more than 50% of the family residential units in the proposed district, no further proceedings shall be taken by the commissioners.

(2) Each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining percent of protest.

History: En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part).

7-13-212. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the commissioners shall pass a resolution creating the refuse disposal district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

(2) The commissioners shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice provided for in 7-13-208;

(b) when a protest shall have been found by said commissioners to be insufficient; or

(c) when a protest shall have been overruled.

History: En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973; R.C.M. 1947, 69-6006(part).

7-13-213. District to be administered by appointed board of directors. Upon creation of any refuse disposal district, the commissioners shall appoint a board of directors for the proposed refuse disposal district.

History: En. Sec. 9, Ch. 71, L. 1969; R.C.M. 1947, 69-6009(part).

7-13-214. Composition of board of directors. (1) The board shall consist of not less than five members.

(2) (a) The board shall consist of one county commissioner, one member from each incorporated city or town that is included in the district, and one member of the county or city-county board of health.

(b) The rest of the board shall consist of interested citizens, distributed equally throughout the district.

(3) In those counties where full-time city-county health departments exist, the city-county board of health may be designated as the board of directors for the refuse disposal district.

History: En. Sec. 9, Ch. 71, L. 1969; R.C.M. 1947, 69-6009(part); amd. Sec. 20, Ch. 251, L. 1979.

7-13-215. Powers and duties of board. The board of a refuse disposal district established and organized under this part has the following powers and duties, with the approval of the county commissioners of the counties involved:

(1) to develop and administer a program for the collection or disposal of refuse in the district;

(2) to employ personnel;

(3) to purchase, rent, or execute leasing agreements for such equipment and material necessary for carrying on an effective refuse collection or disposal program;

(4) to cooperate with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to carry out effective programs;

(5) to receive gifts, grants, or donations for the purpose of advancing the program and to acquire by gift, deed, purchase, or condemnation land necessary for refuse disposal purposes;

(6) to enforce department of health and environmental sciences or local board of health rules pertaining to the storage, collection, and disposal of refuse;

(7) to apply for and receive from the federal government or the state government, on behalf of the refuse disposal district, money appropriated by federal or state legislative bodies for aiding these programs;

(8) to borrow from any loaning agency funds available for assistance in planning or financing a refuse disposal district and repay these with the money received from the fees levied under this part.

History: En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971; amd. Sec. 93, Ch. 349, L. 1974; R.C.M. 1947, 69-6010(part).

7-13-216. Implementation of program. The board may implement its proposed program a section at a time. If a program is implemented a section at a time, the fees may be levied only against that part of the district that is receiving the service. As the program is expanded throughout the district, that part of the district will start to pay the fee for service.

History: En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971; amd. Sec. 93, Ch. 349, L. 1974; R.C.M. 1947, 69-6010(9).

7-13-217. Changes in district boundaries. The governing body of the district may by resolution make such changes in the boundaries of said district as they shall deem reasonable and proper, following the same procedures of notice and hearing outlined under 7-13-205 and 7-13-212.

History: En. Sec. 11, Ch. 71, L. 1969; R.C.M. 1947, 69-6011.

7-13-218. Role of county attorney. The county attorney shall be the legal advisor of the refuse disposal districts and boards within the county of his jurisdiction and shall prosecute and defend all suits to which the districts may be a party. A district or board may employ special legal counsel to defend any such suits in the event a conflict of interest would prohibit such defense by the county attorney.

History: En. Sec. 5, Ch. 136, L. 1971; amd. Sec. 1, Ch. 179, L. 1973; R.C.M. 1947, 69-6013.

7-13-219 through 7-13-230 reserved.

7-13-231. Authorization for charges for services. (1) To defray the cost of maintenance and operation of said refuse disposal district, the board shall establish a fee for service, with approval of the county commissioners.

(2) This fee shall be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of said district.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

7-13-232. Determination of service charge. (1) The fees shall be based upon a family residential unit, and fees for commercial and industrial accounts shall be based on the comparison with a typical residential unit as to volume and type of waste produced.

(2) In no case shall the fee for disposal service exceed one-half the total fee for both collection and disposal services.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

7-13-233. Procedure to collect service charge. The month the service begins, the department of revenue or its agents shall insure that the amount of this fee is placed on the tax notices, to be collected with the tax.

If a property owner fails to pay this fee, it shall become a lien upon the property.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

7-13-234. Disposition and administration of proceeds. (1) All fees and other money received by the district shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which said refuse disposal district was created.

(2) Warrants upon such funds shall be drawn by the board of county commissioners upon presentation of claims approved by the board.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

7-13-235. Installment payments for capital improvements. To defray the initial cost of purchasing land and equipment, payments may be spread over a term of not to exceed 20 years. Payments are to be made in equal installments out of the money received from the fee levy provided for in this part.

History: En. Sec. 8, Ch. 71, L. 1969; R.C.M. 1947, 69-6008.

7-13-236 through 7-13-240 reserved.

7-13-241. Creation of joint refuse disposal districts. (1) Joint refuse disposal districts are districts which encompass two or more counties or parts thereof.

(2) A joint refuse disposal district may be created in the following manner:

(a) The commissioners of each county affected will create the district following the procedure as prescribed under 7-13-203 through 7-13-212.

(b) The commissioners shall appoint a joint board of directors composed of at least five members.

History: En. Sec. 4, Ch. 136, L. 1971; R.C.M. 1947, 69-6012(part); amd. Sec. 21, Ch. 251, L. 1979.

7-13-242. Composition of board of directors of joint district. (1) The board of directors for a joint district will consist of one commissioner from each county involved, one member from each of the incorporated cities or towns that are included in the district, and one member from each of the county or city-county boards of health.

(2) The rest of the joint board of directors shall consist of interested citizens, distributed equally throughout the district, and the appointments shall be acceptable to all groups of county commissioners.

History: En. Sec. 4, Ch. 136, L. 1971; R.C.M. 1947, 69-6012(part).

7-13-243. Administration of funds in joint districts. Fees and other money collected by joint county refuse disposal districts may be administered by one county treasurer's office upon mutual agreement by the county commissioners of any joint refuse disposal district.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

Parts 3 through 20 reserved

Part 21

General Provisions Related to County Utility Services

7-13-2101. Authority to permit construction of utility mains. The board of county commissioners shall have the power and authority to grant to any person, association, or corporation the right to construct and maintain in, along, and under any public road or highway within such county, any pipeline for the conveyance of natural or artificial gas, water, or any other substance for the use of any county, city, or town or the inhabitants thereof.

History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2102. Constructed mains not to interfere with use of road. When constructed, such pipeline shall not now or in the future interfere with the surface use of such road or highway.

History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2103. Payment of damages and restoration of road. The person, association, or corporation owning or constructing such pipeline:

(1) shall compensate such county for any and all damages done to any such road or highway in the laying, construction, or maintenance of such pipeline; and

(2) shall promptly restore any such road or highway to its former condition of usefulness, without interference with the traffic thereon.

History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2104. Scope of prior sections. Nothing contained in 7-13-2101 through 7-13-2103 shall be construed as in any manner affecting any of the terms and provisions of Title 70, chapter 30.

History: En. Sec. 2, Ch. 75, L. 1927; re-en. Sec. 4476.2, R.C.M. 1935; R.C.M. 1947, 16-1115.

Part 22

County Water and/or Sewer Districts

7-13-2201. Definitions. (1) The word "board" and the words "boards of directors" shall apply to the board of directors of such district.

(2) The term "county" shall mean one or more counties and shall be understood and construed to include city and county.

(3) The word "district" shall apply, unless otherwise expressed or used, to a district formed under the provisions of this part and part 23.

(4) The term "municipality", as used in this part and part 23, shall include a consolidated city and county, city, or town and includes all corporations heretofore organized and now existing and those hereafter organized for municipal purposes within such districts.

History: En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part).

7-13-2202. Interpretation. Nothing in this part and part 23 shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or sewers or the supply of water to or the acquisition thereof by counties or municipalities within this state.

History: En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part).

7-13-2203. County water and/or sewer districts authorized. (1) A county water and/or sewer district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

(2) The people of any county or counties or portion of a city or a county or city and county or any combination of these political divisions, whether such portion includes unincorporated territory or not, in the state of Montana, may organize a county water and/or sewer district under the provisions of this part and part 23 by proceeding as therein provided.

History: (1)En. Sec. 1, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4501, R.C.M. 1947; (2)En. Sec. 2, Ch. 242, L. 1957; amd. Sec. 1, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4502, R.C.M. 1947; R.C.M. 1947, 16-4501, 16-4502.

7-13-2204. Petition to create water and/or sewer district. (1) A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of county commissioners of the county in which the proposed district is located, signed by registered voters within the boundaries of the proposed district equal in number to at least 10% of the registered voters of the territory included in such proposed district.

(2) When the territory to be included in such proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which said territory lies. Each of said petitions must be signed by at least 10% of the registered voters of the territory within said county to be included within such proposed district.

(3) Such petition shall set forth and describe the proposed boundaries of such district and shall pray that the same be incorporated under the provisions of this part and part 23.

History: En. Sec. 3, Ch. 242, L. 1957; amd. Sec. 2, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 296, L. 1977; R.C.M. 1947, 16-4503(part).

7-13-2205. Notice of petition — hearing required. (1) The text of the petition referred to in 7-13-2204 shall be published once each week for 2 consecutive weeks in a newspaper printed and published in every county in which said territory lies, together with a notice stating the time of the meeting at which same will be presented.

(2) The first publication shall be at least 2 weeks before the time at which the petition is to be presented. When contained upon more than one instrument, one copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

(3) With such publication there shall be published a notice of the time of the meeting of the board when such petition will be considered and that all persons interested therein may then appear and be heard.

History: (1), (2)En. Sec. 3, Ch. 242, L. 1957; amd. Sec. 2, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 296, L. 1977; Sec. 16-4503, R.C.M. 1947; (3)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; R.C.M. 1947, 16-4503(part), 16-4504(part).

7-13-2206. Hearing on petition — protest. (1) At the time for the hearing, the board of county commissioners shall hear the petition and those appearing thereon, together with such written protests as shall have been filed with the county clerk and recorder prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district within the county. The board of county commissioners may adjourn such hearing from time to time, not exceeding 4 weeks in all.

(2) Upon such hearing of said petition, the board of county commissioners shall determine whether or not said petition complies with the requirements of the provisions of this part and part 23 and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of county commissioners.

History: (1)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; (2)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; R.C.M. 1947, 16-4504(part), 16-4505(part).

7-13-2207. Effect of certain irregularities. No defect in the contents of the petition or in the title to or form of the notice or signatures or lack of signatures thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto.

History: En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; R.C.M. 1947, 16-4504(part).

7-13-2208. Decision on petition — election required. (1) On the final hearing, said board of county commissioners shall make such changes in the proposed boundaries which be within the county as may be deemed advisable and shall define and establish such boundaries, but said board of county commissioners shall not modify said boundaries as to exclude from such proposed district any territory which would be benefited by the formation of such district nor shall any lands which will not, in the judgment of said board of county commissioners, be benefited by such district be included within such proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which said district lies shall give notice of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated. The date of the election shall be not more than 60 days from the date of the final hearing of such petition.

History: (1)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; (2)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; R.C.M. 1947, 16-4504(part), 16-4505(part).

7-13-2209. Application to include benefited lands. Any person whose lands are benefited by such district may, in the discretion of said board of county commissioners, have such lands included within said proposed district upon his application to the board of county commissioners of the county in which his lands be.

History: En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; R.C.M. 1947, 16-4504(part).

7-13-2210. Notice of election. (1) The notice of election required by 7-13-2208 shall describe the boundaries established and shall state the proposed name of the proposed incorporation (which name shall contain the words ".... County water and/or sewer district").

(2) This notice shall be published as provided in 13-1-108.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 319, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-13-2211. Conduct of election on question of creating district. (1) The election on the question of creating the district shall be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as otherwise provided in this part and part 23.

(2) At the election the proposition to be submitted shall be: "Shall the proposition to organize .... County water and/or sewer district under parts 22 and 23 of chapter 13 of Title 7 be adopted?"

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 320, Ch. 571, L. 1979.

7-13-2212. Qualifications to vote on question of creating district. (1) Except as provided in subsection (2), no individual shall be entitled to vote at any election under the provisions of this part and part 23 unless such individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district.

(2) An individual who is the owner of such real property need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that such elector is qualified if he is registered to vote in any state of the United States and files proof of such registration with the election administrator.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 321, Ch. 571, L. 1979.

7-13-2213. Effect of insufficient favorable vote. In case less than a majority of the votes cast are in favor of said proposition, the organization fails but without prejudice to renewing proceedings at any time in the future.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part).

7-13-2214. Order creating district upon sufficient favorable vote. (1) If at least 40% of all registered voters residing within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of county commissioners of each such county shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated.

(2) The county clerk of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county or each county in which such district is situated a certificate stating that such a proposition was adopted.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part).

7-13-2215. Certificate of incorporation from secretary of state. (1) Upon the receipt of the certificate referred to in 7-13-2214(2), the secretary of state shall, within 10 days, issue his certificate reciting that the district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such district is situated.

(2) From and after the date of such certificate, the district named therein shall be deemed incorporated, with all the rights, privileges, and powers set forth in this part and part 23 and necessarily incident thereto.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part).

7-13-2216. Limitations on lawsuits challenging formation of district. (1) A finding of the board of county commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within 1 year after the order of the board of county commissioners declaring such district organized as herein provided and not otherwise.

(2) Any proceeding wherein the validity of the incorporation of the district is denied shall be commenced within 3 months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said district and all proceedings in respect thereto shall be held to be valid and in every respect legal and incontestable.

History: (1)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; (2)En. Sec. 13, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4513, R.C.M. 1947; R.C.M. 1947, 16-4505(part), 16-4513(part).

7-13-2217. General powers of water and/or sewer district. (1) Any district incorporated as provided in this part and part 23 shall have power to:

(a) have perpetual succession;

(b) sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;

(c) adopt a seal and alter it at pleasure;

(d) take by grant, purchase, gift, devise, or lease and to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;

(e) make contracts, employ labor, and do all acts necessary for the full exercise of the foregoing powers.

(2) The powers enumerated in this part and part 23 shall, except as otherwise provided in this part and part 23, be exercised by the board of directors provided for in 7-13-2231 and elected and appointed as described in this part and part 23.

History: (1)En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4514, R.C.M. 1947; (2)En. Sec. 15, Ch. 242, L. 1957; Sec. 16-4515, R.C.M. 1947; R.C.M. 1947, 16-4514(part), 16-4515.

7-13-2218. District powers related to water and sewer projects. Any district incorporated as provided in this part shall have power to:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district; such purposes to include but not be limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes;

(2) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated therein;

(3) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(4) commence, maintain, and defend actions and proceedings to prevent any interference with the aforesaid waters or rights as may endanger the inhabitants or lands of the district;

(5) lease of and from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain the same;

(6) sell water or the use thereof for household or domestic use or other similar purposes and, whenever there is a surplus of water, sell or otherwise dispose of the same to municipalities or towns or to consumers located within or without the boundaries of the district.

History: En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4514(5) thru (7).

7-13-2219. Power to construct works across roads and other obstacles. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said works may intersect or cross;

provided such works are constructed in such manner as to afford security for life and property; and said board shall restore the crossings and intersections to their former state as near as may be or in a manner not to have impaired unnecessarily their usefulness.

History: En. Sec. 24, Ch. 242, L. 1957; R.C.M. 1947, 16-4524(part).

7-13-2220. Right-of-way across state lands. The right-of-way is given, dedicated, and set apart to locate, construct, and maintain district works over and through any lands which are the property of this state, and the district has the same rights and privileges relating to the right-of-way as are granted to municipalities.

History: En. Sec. 24, Ch. 242, L. 1957; R.C.M. 1947, 16-4524(part); amd. Sec. 22, Ch. 251, L. 1979.

7-13-2221. Powers related to district finances. Any district incorporated as provided in this part shall have power to:

(1) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water or sewer development projects;

(2) cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances for and meeting local cooperation requirements of any project involving control, conservation, and use of water;

(3) borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness; also refund or retire any indebtedness or lien that may exist against the district or property thereof;

(4) cause taxes to be levied in the manner provided for in this part and part 23 for the purpose of paying any obligation of the district and to accomplish the purposes of this part and part 23 in the manner provided in this part and part 23.

History: En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-1514(8) thru (10).

7-13-2222. Applicability of general election laws. Except as otherwise provided in this part and part 23, the provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all district elections.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

7-13-2223. Repealed. Sec. 407, Ch. 571, L. 1979.

7-13-2224. Repealed. Sec. 2, Ch. 538, L. 1979; Sec. 407, Ch. 571, L. 1979.

7-13-2225. Combination of elections. (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness so that the electors of the district may vote on all of these matters on the same date and at the same time.

(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. Whenever the elections are combined, notice of the election, the names of the candidates, and the details concerning the bonded indebtedness may be given in the manner prescribed by 7-13-2210, [7-13-2248], or either of them.

(3) Candidates for the office of director shall be nominated in the manner required by [7-13-2235 through 7-13-2248].

History: En. 16-4535 by Sec. 1, Ch. 109, L. 1969; R.C.M. 1947, 16-4535.

Compiler's Comments

Commissioner correction. The bracketed references were repealed, either in part or in whole, by Sec. 407, Ch. 571, L. 1979. The brackets were added by the Code Commissioner, 1979. This section requires an amendment to provide proper referencing.

7-13-2226 through 7-13-2230 reserved.

7-13-2231. District to be governed by board of directors. (1) At an election to be held within a district under the provisions of this part and part 23 and the laws governing general elections not inconsistent therewith, the district thus organized shall proceed, within 120 days after its formation, to the election of a board of directors.

(2) The board of directors is the governing body of such district.

History: (1)En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; Sec. 16-4506, R.C.M. 1947; (2)En. Sec. 10, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4510, R.C.M. 1947; R.C.M. 1947, 16-4506(part), 16-4510(part); amd. Sec. 322, Ch. 571, L. 1979.

7-13-2232. Composition of board of directors. (1) If there are no municipalities within the boundaries of said district, the board of directors shall consist of five members or three members if there are 10 or less qualified electors in the district.

(2) In all cases where the boundaries of such district include any municipality or municipalities, said board, in addition to said five or three directors to be elected as aforesaid, shall consist of one additional director for each of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed, and, if there be any unincorporated territory within said district, one additional director to be appointed by the board of county commissioners of each county containing such territory.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2233. Qualifications of directors. Any director so elected or appointed shall be an owner or lessee of real property within said district or a resident therein.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2234. Term of office. (1) All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors.

(2) Except as otherwise provided, the term of office of directors elected under the provisions of this part and part 23 shall be 4 years from and after the date of their election.

(3) Directors elected at the first regular election under this part and part 23 after July 1, 1979, shall serve as follows:

(a) In districts requiring the election of five elected directors, three directors shall serve for a term of 2 years and two for a term of 4 years.

(b) In districts requiring the election of three elected directors, one director shall serve for a term of 2 years and two for a term of 4 years.

(c) At their first meeting, the directors shall determine by lot which of them shall serve the term or terms less than 4 years. Every term thereafter shall be for a period of 4 years.

(4) The term of office of directors appointed by the mayor or mayors or by the board of county commissioners shall be 6 years from and after the date of appointment. Directors to be first appointed under the provisions of this part and part 23 shall be appointed within 90 days after the formation of the district.

(5) The first regular election for a district shall be held in November of the next odd-numbered year following the formation of the district.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part); amd. Sec. 1, Ch. 538, L. 1979; amd. Sec. 323, Ch. 571, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 571 and Ch. 538, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Although Ch. 571 and Ch. 538 appear to conflict in use of language, they do not conflict conceptually. In preparing the composite, changes were made to incorporate the concepts of both chapters.

7-13-2235. Election and appointment procedure. The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of county commissioners shall be as provided in [7-13-2236 through 7-13-2253] and [7-13-2257 through 7-13-2259] and not otherwise.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(1).

Compiler's Comments

Commissioner correction. The bracketed references were repealed, either in part or in whole, by Sec. 407, Ch. 571, L. 1979. The brackets were added by the Code Commissioner, 1979. This section requires an amendment to provide proper referencing.

7-13-2236. General district election. The election of directors of the district shall be held every 4 years with the election for local government officials provided for in 13-1-104(2).

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part); amd. Sec. 324, Ch. 571, L. 1979.

7-13-2237. Petition of nomination required for printing of name on ballot. The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions set forth in 7-13-2238 through 7-13-2247.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(2); amd. Sec. 388, Ch. 571, L. 1979.

7-13-2238. Form of petition. (1) The petition of nomination shall consist of not less than five individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION
Individual Certificate

State of .....
County of ....

Prect. No. .....

I, the undersigned, certify that I do hereby join in a petition for the nomination of ...., whose residence is at ...., for the office of .... of the .... district, to be voted for at the district election to be held in the.... district on the.... day of ...., 19..; and I further certify that I am a registered elector and an owner or lessee of real property within said district or a resident therein and am not at this time a signer of any other petition nominating any other candidate for the above-named office or, in case there are several places to be filled in the above-named office, that I have not signed more petitions than there are places to be filled in the above-named office; that my residence is at No. ..... street, ..., and that my occupation is ....

(Signed) ......

State of Montana
County of ......

...., being duly sworn, deposes and says that he is the individual who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) ......

Subscribed and sworn to before me this .... day of ....., 19...

....
Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to...., at...., Montana.

(2) It shall be the duty of the election administrator to furnish, upon application, a reasonable number of forms of individual certificates of the above character. If the district lies in more than one county, the election administrator whose county contains the largest percentage of the territory of the district shall fulfill this function.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(3), (4); amd. Sec. 325, Ch. 571, L. 1979.

7-13-2239. Details relating to petition certificates. (1) Each certificate must be a separate paper.

(2) All certificates must be of uniform size as determined by the election administrator.

(3) Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more.

(4) Each certificate shall contain the name and address of the person to whom the petition is to be returned in case the petition is found insufficient.

History: **En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 326, Ch. 571, L. 1979.**

7-13-2240. Qualifications to sign petition. (1) Each signer must be a registered elector owning real property or residing within the district.

(2) No signer may at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in the office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected.

(3) Each signer must verify his certificate and make oath that the same is true before a notary public.

History: **En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 327, Ch. 571, L. 1979.**

7-13-2241. Presentation of petition of nomination. (1) A petition of nomination, consisting of not less than five individual certificates for any one candidate, may be presented to the election administrator not earlier than 65 days or later than 50 days before the election. The election administrator shall endorse thereon the date upon which the petition was presented to him.

(2) If the district lies in more than one county, the petition for nomination shall be presented to the election administrator whose county contains the largest percentage of the territory of the district and the election administrator shall fulfill all duties assigned to election administrators in elections under this part and part 23.

History: **En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(6); amd. Sec. 328, Ch. 571, L. 1979.**

7-13-2242. Examination of petition. (1) When a petition of nomination is presented for filing to the election administrator, he shall examine the same and ascertain whether or not it conforms to the provisions of 7-13-2237 through 7-13-2247. If found not to conform thereto, he shall in writing designate on the petition the defect or omission or reason why the petition cannot be filed and shall return the petition to the individual named as the individual to whom it may be returned in accordance with 7-13-2240.

(2) The petition may then be amended and again presented to the election administrator as in the first instance but in no case may a petition be presented later than 50 days before the election. The election administrator shall proceed to examine the petition as hereinbefore provided.

History: **En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 329, Ch. 571, L. 1979.**

7-13-2243. Assistance for election administrator. If necessary, the board of commissioners shall provide extra help to enable the election administrator to perform satisfactorily and promptly the duties imposed by [7-13-2235 through 7-13-2253].

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 330, Ch. 571, L. 1979.

Compiler's Comments

Commissioner correction. The bracketed references were repealed, either in part or in whole, by Sec. 407, Ch. 571, L. 1979. The brackets were added by the Code Commissioner, 1979. This section requires an amendment to provide proper referencing.

7-13-2244. Filing of petitions. (1) If either the original or amended petition of nomination is found sufficiently signed as hereinbefore provided, the election administrator shall file it.

(2) When a petition of nomination has been filed by the election administrator, it may not be withdrawn or added to, and no signatures may be revoked thereafter.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(10); amd. Sec. 331, Ch. 571, L. 1979.

7-13-2245. Withdrawal of signature from petition. (1) Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county election administrator a verified revocation of his signature before the filing of his petition by the election administrator and not otherwise.

(2) He shall then be at liberty to sign a petition for another candidate for the same office.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(8); amd. Sec. 389, Ch. 571, L. 1979.

7-13-2246. Withdrawal of candidacy. (1) Any individual whose name has been presented under [7-13-2235 through 7-13-2248] as a candidate may, not later than 30 days before the day of election, cause his name to be withdrawn from nomination by filing with the election administrator a request therefor in writing, and no name withdrawn may be printed upon the ballot.

(2) If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than 30 days prior to the election.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(9); amd. Sec. 332, Ch. 571, L. 1979.

Compiler's Comments

Commissioner correction. The bracketed references were repealed, either in part or in whole, by Sec. 407, Ch. 571, L. 1979. The brackets were added by the Code Commissioner, 1979. This section requires an amendment to provide proper referencing.

7-13-2247. Preservation of petitions and certificates. The county clerk shall preserve in his office for a period of 2 years all petitions of nomination and all certificates belonging thereto filed under 7-13-2244.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(11).

7-13-2248. Repealed. Sec. 407, Ch. 571, L. 1979.

7-13-2249. Proclamation of election. The proclamation of election shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force and applicable thereto, except as otherwise provided herein.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part).

7-13-2250. Repealed. Sec. 407, Ch. 571, L. 1979.

7-13-2251. Repealed. Sec. 407, Ch. 571, L. 1979.

7-13-2252. Repealed. Sec. 407, Ch. 571, L. 1979.

7-13-2253. Repealed. Sec. 407, Ch. 571, L. 1979.

7-13-2254. Provision for vote by corporate property owner. Where a corporation owns real property within the boundaries of the district, the president, vice-president, or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

7-13-2255. Provision for vote by nonresident property owner. An elector owning real property within the district need not reside within the district in order to vote.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

7-13-2256. Canvass of vote. (1) The board of county commissioners shall canvass the returns of the first election, and thereafter, except as provided in this part and part 23, the board of directors shall meet as a canvassing board and duly canvass the returns within 4 days after any district election, including any district bond election.

(2) If the district lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of said district shall canvass the returns of the first election.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

7-13-2257. Repealed. Sec. 407, Ch. 571, L. 1979.

7-13-2258. Effect of failure to qualify for office. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office as provided in 7-13-2262.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(20).

7-13-2259. Manner of making appointments. The mode of appointment of director or directors by a mayor or by a board of county commissioners shall be by certificate of appointment signed by said mayor or issued by said board of county commissioners and transmitted to the board of directors of said district.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(21).

7-13-2260. Provision for municipalities not having mayor. In municipalities in which there is no mayor, the duty imposed upon said officer by the provisions of this part and part 23 shall be performed by the president of the board of trustees or other chief executive of the municipality.

History: En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part).

7-13-2261. Recall of officers. Every incumbent of an elective office, whether elected by popular vote for a full term, elected by the board of directors to fill a vacancy, or appointed by a mayor or the board of commissioners for a full term, is subject to recall by the electors of any district organized under the provisions of this part and part 23 in accordance with Title 2, chapter 16, part 6.

History: En. Sec. 9, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4509; amd. Sec. 24, Ch. 251, L. 1979; amd. Sec. 333, Ch. 571, L. 1979.

7-13-2262. Vacancies on board of directors. Any vacancy in the board of directors, whether the vacant office is elective or appointive, shall be filled by the remaining directors.

History: En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part).

7-13-2263 through 7-13-2270 reserved.

7-13-2271. Organization of board of directors. (1) The board of directors shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided. It shall choose one of its members president and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called.

(2) The board shall establish rules for its proceedings.

History: En. Sec. 10, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4510(part).

7-13-2272. Duties of board president. The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors.

History: En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).

7-13-2273. Compensation of members of board. Each of the members of the board of directors shall receive $20 for each attendance at the meetings of the board and shall receive no other compensation. No director, however, shall receive pay for more than three meetings in any calendar month.

History: En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part).

7-13-2274. Conduct of business. (1) All legislative sessions of the board of directors, whether regular or special, shall be open to the public.

(2) A majority of the board shall constitute a quorum for the transaction of business.

(3) The board shall act only by ordinance or resolution.

History: En. Secs. 10, 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4510(part), 16-4511(part).

7-13-2275. Procedure relating to ordinances and resolutions. (1) The ayes and noes shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board shall be in these words: "Be it ordained by the board of directors of .... district as follows:"

(3) All resolutions and ordinances shall be signed by the president of the board and attested by the secretary.

History: En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part).

7-13-2276. Right of initiative and referendum. (1) Ordinances may be passed by the electors of any district organized under the provisions of this part and part 23 in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

(2) Ordinances may be disapproved and thereby vetoed by the electors of any such district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation by cities and towns.

History: En. Secs. 29, 30, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4529, 16-4530.

7-13-2277. Appointment of administrative personnel. (1) The board of directors shall, at its first meeting or as soon thereafter as practicable, appoint by a majority vote a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor.

(2) The general manager, secretary, and auditor shall receive such compensation as the board shall determine, and each shall serve at the pleasure of the board.

History: En. Sec. 12, Ch. 242, L. 1957; R.C.M. 1947, 16-4512.

7-13-2278. Duties of administrative personnel. (1) The general manager shall have full charge and control of the maintenance, operation, and construction of all works and systems of the district, with full power and authority to employ and discharge all employees and assistants at pleasure and prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform such other duties as may be imposed upon him by the board. The general manager shall report to the board in accordance with such rules as it may adopt.

(2) The secretary shall countersign all contracts on behalf of the district and perform such other duties as may be imposed by the board.

(3) The auditor shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least three members of the board and by the general manager.

History: **En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).**

7-13-2279. Performance bonds for administrative personnel. The general manager, secretary, and auditor and all other employees or assistants of said district who may be required to do so by the board of directors shall give bonds to the district, conditioned for the faithful performance of their duties, as the board from time to time may provide.

History: **En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).**

Part 23

County Water and/or Sewer Districts Continued

7-13-2301. Establishment of charges for services. (1) The board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users.

(2) The board in the furnishing of water, sewer service, other services, and facilities shall fix such rate, fee, toll, rent, or other charge as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due.

(3) Notwithstanding any other section of this part or part 22 or limitation imposed therein and when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of treatment services and works, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of treatment works to pay the portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial user's wastes.

History: **(1)En. Sec. 25, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4525, R.C.M. 1947; (2), (3)En. Sec. 26, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 17, Ch. 455, L. 1975; Sec. 16-4526, R.C.M. 1947; R.C.M. 1947, 16-4525, 16-4526.**

7-13-2302. Levy of taxes to meet bond obligations and other expenses. (1) If from any cause the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must (at least 15 days before the first day of the month in which the board of county commissioners of the county, city and county, or counties in which such district is located are required by law to levy the amount of taxes required for county or city and county purposes) furnish to the board or boards of county commissioners and to the auditor or auditors, respectively, an estimate in writing:

(a) of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due;

(b) of the amount of money required to establish reasonable reserve funds for either of said purposes, together with a description of the lands benefited thereby, as stated by the board of directors in the resolution declaring the necessity to incur such bonded indebtedness; and

(c) of the amount of money required by the district for any other purpose set forth in this section.

(2) The board of county commissioners of such county or city and county, annually, at the time and in the manner of levying other county or city and county taxes, must:

(a) until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof, to be known as the ...... district bond tax; and

(b) until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof, to be known as the .... district water and/or sewer tax.

(3) Such taxes for the payment of any such bonded debt shall be levied on the property benefited thereby, as stated by the board of directors in the resolution declaring the necessity therefor, and all taxes for other purposes shall be levied on all property in the territory comprising the district.

History: (1), (2)En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; Sec. 16-4527, R.C.M. 1947; (3)En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; Sec. 16-4528, R.C.M. 1947; R.C.M. 1947, 16-4527(part), 16-4528(part).

7-13-2303. Method of assessment. (1) When the amount of money required for any purpose enumerated in 7-13-2302 has been determined:

(a) each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or

(b) said assessment may, at the option of the board or boards of county commissioners, be based upon the taxable valuation as stated in the last completed county assessment roll of the lots or parcels of land, exclusive of improvements thereon, within said district; and in which case, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(2) However, where the district lies in more than one county, the same method of assessment shall be used by each board of county commissioners.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2304. Notice of intention to levy tax. (1) When the written estimate of the amount of money required has been delivered to the board of county commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof.

(2) Such notice shall be given:

(a) by posting notice thereof in five public places within the county and within the boundaries of the lands upon which the tax is to be levied;

(b) by publishing a copy of the notice once each week for 2 consecutive weeks in a newspaper published in each county wherein the district is located; and

(c) by forwarding, by regular first-class mail or registered or certified mail at least 10 days prior to the hearing provided for in 7-13-2306(4), a copy of the notice addressed to the owners of taxable real property within the district as shown by the current assessment book on file in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district.

History: **En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).**

7-13-2305. Legal sufficiency of notice. The legislature hereby finds, determines, and declares that the giving of notice in accordance with 7-13-2304(2) is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in 7-13-2306(4) and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

History: **En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).**

7-13-2306. Contents of notice — hearing and protest. The notice required by 7-13-2304 shall state:

(1) the amount of money required;

(2) the method of assessment which the board or boards of county commissioners intend to employ;

(3) the boundaries or description of the lands to be assessed, which boundaries or description may be recited in full or may be given by reference to any instrument on file or of record in the office of the clerk and recorder, treasurer, or assessor of the county or counties in which the district or part thereof is situated; and

(4) the time when and the place where the board or boards of county commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining thereto.

History: **En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).**

7-13-2307. Hearing on protest to levy of tax. (1) The hearing provided for in 7-13-2306(4) shall be had no less than 15 days after the last publication of the notice.

(2) At the time and place designated for said hearing, any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, considered, and ruled upon by the board of county commissioners.

(3) The board of county commissioners may adjourn said hearing from time to time.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2308. Payment of tax under protest — action to recover. (1) Where such tax is deemed unlawful for any reason by the person whose property is taxed, whether or not he has protested the same at the hearing provided for in 7-13-2306(4), he may pay the tax or the installments thereof under protest in the manner provided by 15-1-402 and, thereupon and within the time prescribed and in the manner provided by 15-1-402, may commence an action to recover such tax or installments and in such action contest and litigate the payment of such tax on the same grounds and for the same reasons that he has stated in his written protest and for no other reasons and on no other grounds.

(2) All of the provisions of 15-1-402 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2309. Collection of taxes. (1) All taxes referred to in 7-13-2302(3) shall be collected at the same time and in the same manner and form as county taxes are collected and when collected shall be paid to the district for which such taxes were levied and collected.

(2) Such taxes, if not paid, shall become delinquent at the same time as do county taxes.

History: En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; R.C.M. 1947, 16-4528(part).

7-13-2310. Taxes to be lien. (1) If such taxes are levied for the payment of a bonded debt for the benefit of certain property within the district, as stated in the aforesaid resolution of the board of directors, such taxes shall be a lien upon each lot or parcel of said property to the extent of the levy of said taxes upon said lot or parcel. All taxes for other purposes shall be a lien upon each lot or parcel of land within the entire area comprising the district, to the extent of the levy of said taxes upon said lot or parcel.

(2) Said taxes, whether for the payment of a bonded indebtedness or for other purposes, shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for in the enforcement of liens for state and county taxes.

History: En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; R.C.M. 1947, 16-4528(part).

7-13-2311. Designation of fund depositary. The board of directors shall designate a depositary or depositaries to have the custody of the funds of the district, all of which depositaries shall give security sufficient to secure the district against possible loss and shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe.

History: En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).

7-13-2312 through 7-13-2320 reserved.

7-13-2321. Procedure to incur bonded indebtedness. Whenever the board of directors deems it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, and the proposition to be submitted to the electors.

History: **En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971; R.C.M. 1947, 16-4517(part).**

7-13-2322. Term of bonds. The maximum term of bonds shall not exceed 40 years.

History: **En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971; R.C.M. 1947, 16-4517(part).**

7-13-2323. Election on question of incurring bonded indebtedness. The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing the bonded indebtedness to be incurred.

History: **(1)En. Sec. 18, Ch. 242, L. 1957; Sec. 16-4518, R.C.M. 1947; (2)En. Sec. 19, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4519, R.C.M. 1947; (3)En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974; amd. Sec. 4, Ch. 521, L. 1975; amd. Sec. 4, Ch. 296, L. 1977; Sec. 16-4520, R.C.M. 1947; R.C.M. 1947, 16-4518, 16-4519(part), 16-4520(part); amd. Sec. 334, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-13-2324. Notice of election on incurring bonded indebtedness. (1) The board of directors shall give notice of the holding of the election. The notice shall contain the resolution adopted by the board of directors of the district, boundaries of voting precincts, which shall include only the lands to be benefited as stated in the resolution, and the location of polling places.

(2) The notice shall be published as provided in 13-1-108.

History: **(1)En. Sec. 19, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4519, R.C.M. 1947; (2)En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974; amd. Sec. 4, Ch. 521, L. 1975; amd. Sec. 4, Ch. 296, L. 1977; Sec. 16-4520, R.C.M. 1947; R.C.M. 1947, 16-4519(part), 16-4520(part); amd. Sec. 335, Ch. 571, L. 1979.**

7-13-2325. Qualifications to vote on question of incurring bonded indebtedness. Every registered elector owning or residing upon real property within such voting precincts, but no others, shall be entitled to vote at the election.

History: **En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974; amd. Sec. 4, Ch. 521, L. 1975; amd. Sec. 4, Ch. 296, L. 1977; R.C.M. 1947, 16-4520(part); amd. Sec. 336, Ch. 571, L. 1979.**

7-13-2326. Repealed. Sec. 407, Ch. 571, L. 1979.

7-13-2327. Entry of bond election results. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results.

History: En. Sec. 21, Ch. 242, L. 1957; R.C.M. 1947, 16-4521(part).

7-13-2328. Sufficient vote required to issue bonds. If from such returns it appears that 60% or more of the votes cast on the question at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may by resolution, at such time or times as it considers proper, provide for the form and execution of the bonds and for the issuance of any part thereof.

History: En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969; R.C.M. 16-4522(part); amd. Sec. 337, Ch. 571, L. 1979.

7-13-2329. Sale of bonds. The board of directors may sell or dispose of the bonds issued pursuant to 7-13-2328 at such times or in such manner as it may deem to be to the public interest.

History: En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969; R.C.M. 16-4522(part).

7-13-2330. Status of bonds — tax exemption. Any bonds issued by any district organized under the provisions of this part and part 22 are hereby given the same force, value, and use as bonds issued by any municipality and shall be exempt from all taxation within the state of Montana.

History: En. Sec. 23, Ch. 242, L. 1957; R.C.M. 1947, 16-4523.

7-13-2331 through 7-13-2340 reserved.

7-13-2341. Addition of land to district. (1) Any portion of any county, any municipality, or both, may be added to any district organized under the provisions of this part and part 22 at any time upon petition presented in the manner provided in this part and part 22 for the organization of such district.

(2) The petition may be granted by ordinance of the board of directors of such district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such district and in the proposed addition at a general or special election held, as provided in this part and part 22, within 70 days after the adoption of such ordinance.

(3) If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such district is located. Upon the receipt of such last-mentioned certificate, the secretary of state shall within 10 days issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such district is situated.

(4) From and after the date of such certificate, the territory named therein shall be deemed added to and form a part of said district with all the rights, privileges, and powers set forth in this part and necessarily incident thereto.

History: En. Sec. 31, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4531(part).

7-13-2342. Consolidation of county water and/or sewer districts. (1) Two or more districts organized under the provisions of this part and part 22 may consolidate at any time, upon petitions submitted to the board of directors of each such district. Such petitions shall be in the form required for petitions for the organization of districts. Each such petition shall be signed by not less than 10% of the registered voters of the territory included within said district.

(2) Said petitions may be granted by ordinance of the board of directors of each of said districts. Such ordinances shall be submitted for adoption or rejection to the vote of the electors in such districts at general or special elections held, as provided in this part and part 22, within 70 days after the adoption of such ordinances.

(3) If such ordinances are approved, the president and secretary of the boards of directors of each of said districts shall certify that fact to the secretary of state and to the county clerk of the county or counties in which such districts are located. Upon the receipt of said certificate, the secretary of state shall within 10 days issue his certificate, reciting the passage of said ordinances and the consolidation of said districts. A copy of such certificate shall be transmitted to and filed with the county clerk of each county in which such consolidated district is situated.

(4) From and after the date of such certificate, the districts shall be deemed to be consolidated and shall consist of one district with all the rights, privileges, and powers set forth in this part and part 22 and necessarily incident thereto.

(5) The number and manner of selection and election of directors of the consolidated district shall be the same as the number and manner of selection and election of directors of newly organized districts.

History: En. Sec. 31, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4531(part).

7-13-2343. Exclusion of land from district — initiated by petition. Any territory included within any district formed under the provisions of this part and part 22 and not benefited in any manner by such district or its continued inclusion therein may be excluded therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2344. Details relating to petition to exclude land from district. (1) The petition referred to in 7-13-2343 shall describe the territory sought to be excluded, shall set forth that such territory is not benefited in any manner by said district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district.

(2) Such petition shall be filed with the secretary of the district and shall be accompanied by a deposit with such secretary of the sum of $100 to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified

copy of the order provided for in 7-13-2346. Any unconsumed balance shall be returned to the petitioner.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2345. Hearing and notice on petition to exclude land. (1) Upon the filing of such petition with the secretary of the district, he shall call a meeting of the board of directors of the district at a time not less than 25 days or more than 50 days after the filing of the petition and cause a notice of the filing of such petition to be published once each week for 2 consecutive weeks in a newspaper of general circulation published in each county in which the district is situated. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district and shall state the time of the hearing and the place thereof.

(2) Any landowner or taxpayer within the district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing.

(3) (a) Except as provided in subsection (3)(b), the place of the hearing shall be the regular meeting place of the board of directors of the district.

(b) The board may adjourn the hearing to a more convenient meeting place within the district.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2346. Decision on petititon to exclude land. (1) If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition or some portion thereof be excluded from the district or if it appears that such lands or some portion thereof will not be benefited by their continued inclusion in the district, then the board shall make an order that such lands or such portion thereof be excluded from the district, such order to describe specifically the lands so excluded.

(2) A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county or counties in which the district is situated, and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2347. Effect of order excluding land. From the time of the making of the order of exclusion, the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2348. Exclusion of land from district — initiated by board of directors. (1) The board of directors of any district formed under the provisions of this part and part 22 may itself initiate the proceedings for the exclusion from the district of any land or lands which it may not be for the best interests of the district to be included or which may not be benefited in any manner by their continued inclusion therein.

(2) Such proceedings shall be initiated by the board by the passage of a resolution:

(a) requiring all persons interested to appear and show cause before the board, at a time and place specified, why such lands (describing them) should not be excluded from the district; and

(b) fixing a time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and of such hearing.

(3) Upon the passage of such resolution, the secretary of the district shall give notice thereof and of the time and place of such hearing in the manner hereinbefore prescribed for notice of hearing upon petition by a landowner or landowners, and thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by a landowner or landowners. The time of hearing fixed by the board by its resolution hereinbefore mentioned shall be not less than 25 days or more than 50 days after the passage of such resolution, and the place of hearing so fixed shall be a convenient place within the district.

(4) The final action of the board of directors under this section shall be subject to the referendum by the electors of the district according to 7-13-2276(2).

History: En. Sec. 34, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4534.

Part 24

Garbage and Ash Collection Districts

7-13-2401. Reestablishment of certain garbage and ash collection districts. Any county that created a garbage and ash collection district pursuant to the provisions of subdivision 29, section 1, chapter 100, Laws of 1931, as amended, prior to the repeal of said section may continue to operate a garbage and ash collection district pursuant to this part.

History: En. 16-1031.1 by Sec. 1, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.1.

7-13-2402. Authority to create garbage and ash collection districts. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to create, abolish, and change garbage and ash collection districts in thickly settled areas outside of the limits of incorporated cities and towns.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2403. Creation of districts to be pursuant to rules. (1) Such districts shall be created under rules to be promulgated by the board of county commissioners.

(2) The rules shall provide for petition on the part of a majority of taxpayers residing within such areas and for the survey of proposed districts by

the county health officer as to boundaries and methods for disposal of garbage and ashes within such districts.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2404. Operation of district. (1) When such a district has been created under the authority of this part, the county commissioners shall be authorized and empowered to provide for the maintenance and support thereof and for the purchase or leasing of land necessary for such purpose.

(2) The county commissioners may provide for the collection and disposal of garbage and ashes for such districts by entering into contracts with individual contractors or firms to perform such services under a system of rates approved by the commissioners.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2405. Determination of rates for collection services. The rates authorized by 7-13-2404(2) shall be applied on a fair and equal basis to all persons utilizing such garbage collection service within a district, and all rates so established shall be in relation to the amount and matter of collection and disposal service provided to the various types of customers within a district. However, in no event shall any fee exceed the amount of $3 per month for a family residential unit.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2406. Assessment authorized. (1) The board of county commissioners may collect the funds necessary to operate said district, as provided in this part, by placing a special assessment on the owners of the real property benefited by such service and shall collect the same with the general taxes.

(2) Such special assessment shall be a lien on said property so assessed.

History: En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

Part 25

Television Districts

7-13-2501. Authorization to create television districts. (1) Any area of the state may organize as a television district for the performance of functions provided for in this part.

(2) A television translator district may include a part or all of any county or may include areas in more than one county and may include any municipality located within such county or counties.

History: En. Secs. 2, 3, Ch. 198, L. 1961; R.C.M. 1947, 70-409, 70-410.

7-13-2502. Purposes of television district. The purposes of a television district shall be to serve the public interest, convenience, and necessity in the construction, maintenance, and operation of television translator stations and any system necessary thereto by appropriate electric or electronic means for television program distribution, but said purposes are not meant to include the construction or operation of community antenna systems, commonly known and referred to as cable TV systems.

History: En. Sec. 1, Ch. 198, L. 1961; R.C.M. 1947, 70-408.

7-13-2503. Petition to create district. (1) A petition to form a district shall be presented to the county clerk and recorder of each of the counties in which any portion of the area is situated. Petitions shall be signed by at least 51% of the registered electors who are residents of the proposed district.

(2) The petition shall state the objects of the district and designate the boundaries thereof by section and the approximate number of people to be benefited thereby and shall contain a brief description of the proposed system, including type of construction, location, and approximate cost of the installation. It shall also state that the proposed district will be conducive to the public interest, convenience, and necessity. It shall request that it be organized as a television district.

History: **En. Sec. 4, Ch. 198, L. 1961; R.C.M. 1947, 70-411; amd. Sec. 1, Ch. 479, L. 1979.**

7-13-2504. Filing of petition. (1) Such petition shall be filed with the county clerk and recorder of all counties in which the signers on the petition are located. If the petition is filed with more than one county clerk and recorder, each petition shall state the number of signers on it and the name of the county where the petition containing the most signers is filed.

(2) (a) At the time of filing the petition, the sponsors thereof shall cause to be deposited with the county clerk and recorder a sufficient sum of money to cover the cost of publication of all notices provided for in 7-13-2506.

(b) If the notices are not published, the deposit shall be returned to whoever deposited the funds. If there is any surplus remaining after paying for such publication as herein provided, it shall be returned to the original depositor or depositors. If a district is created, the fees so expended are an obligation of the district and shall be repaid by the district to the depositors.

History: **En. Secs. 5, 6, Ch. 198, L. 1961; R.C.M. 1947, 70-412(part), 70-413(part).**

7-13-2505. Processing of petition. (1) Upon the filing of such petition or petitions, the county clerk and recorder shall examine the petition and certify whether the required number of signers are found thereon. After the examination of the petition, the county clerk and recorder of any county containing the least number of signers, if more than one county is involved, shall transmit the petition to the county clerk and recorder of the county containing the most signers.

(2) Within 30 days following the receipt of such petitions, the county clerk and recorder in the county containing the most names on the petitions shall transmit the petitions to the board of county commissioners of the county in which the greater number of petitioners reside, together with his certificate and the certificates of any other county clerk and recorder as to the sufficiency thereof.

History: **En. Sec. 5, Ch. 198, L. 1961; R.C.M. 1947, 70-412(part).**

7-13-2506. Notice of petition and hearing. Upon receipt of a duly certified petition, the board of county commissioners shall cause the text of the petition to be published once a week for at least 3 consecutive weeks in a newspaper of general circulation within the county where the petition is presented. If any portion of the proposed district lies in another county, the petition and notice shall likewise be published in that county. No more than five names attached to the petition shall appear in the publication and notice, but the number of signatures shall be stated. With the publication of the petition, there shall be published a notice of the time of the meeting of the county commissioners when the petition will be considered, stating that all persons interested may appear and be heard.

History: En. Sec. 6, Ch. 198, L. 1961; R.C.M. 1947, 70-413(part).

7-13-2507. Hearing on petition. At the time set for hearing such petition or petitions, the board of county commissioners shall hear all persons who desire to be heard relative to the creation of a television district. The board may, if they so desire and it appears to be desirable, adjourn the meeting for not to exceed 30 days in time to further hear the petitioners and protestants, if any.

History: En. Sec. 7, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part).

7-13-2508. Decision by county commissioners. After such hearing or hearings, the board of county commissioners shall adopt a resolution either creating the proposed television district or denying the petition.

History: En. Sec. 7, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part).

7-13-2509. Resolution to create district. (1) If the board of county commissioners desires to create the television district, they shall adopt a resolution describing the proposed system, including type of construction, location, and type and approximate cost of any installation to be made, describing the boundaries of such district and finding that the district will be conducive to the public interest and convenience, and thereby such district shall be created.

(2) If the board passes a resolution creating such district, they shall name the district "........ television district" and file a copy of the order creating such district, if only one county is included therein, with the county clerk and recorder. If portions of more than one county are included in said district, a copy of the order shall be filed in each county. A copy of the order shall be filed with the secretary of state, for which he shall receive a fee of $5.

History: En. Secs. 7, 8, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part), 70-415(part).

7-13-2510. Powers of district. A television district organized under this part, acting through its board of trustees herein provided for, may:

(1) perform all the acts and take all the necessary or proper steps to assure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within such service area shall be supplied by means of an appropriate electrical or electronic system for television program distribution, such authorized system to provide such flexibility as to permit radical improvements in technical quality without rendering inoperative receivers therein, but discontinuance of service by the district for improvements or repairs for a temporary period shall not be construed as rendering inoperative;

(2) if necessary or proper in the furtherance of the objects of this part, acquire, build, construct, repair, own, maintain, and operate any necessary stations transmitting simultaneous visual and aural signals intended to be

received by the general public, relay stations, pickup stations, or any other necessary electrical or electronic system;

(3) make contracts to compensate any owner of land or other property for the use of such property for the purposes of this part;

(4) make contracts with the United States, any state or municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) acquire, by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits) and employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this part;

(7) issue warrants, payable at the time stated therein, to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board, payable annually or semiannually as the board may prescribe;

(8) contract indebtedness or borrow money for corporate purposes and issue revenue bonds therefor to be repaid from rates and charges, bearing interest at a rate not exceeding 7% per annum payable semiannually, the bonds not to be sold for less than par and accrued interest;

(9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this part;

(10) prescribe such installation or ready-to-serve charges to be used for any costs connected with preparation, acquisition, or construction of the system;

(11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law; and

(12) provide FM translator services if authorized as provided in 7-13-2512.

History: En. Sec. 13, Ch. 198, L. 1961; R.C.M. 1947, 70-420(part); amd. Sec. 2, Ch. 13, L. 1979; amd. Sec. 2, Ch. 479, L. 1979.

Compiler's Comments

Amendment superseded. Ch. 13, L. 1979, amended 7-13-2510 and 7-13-2527 through 7-13-2529. Section 12, Ch. 479, L. 1979, repealed Ch. 13. Reference to Ch. 13 appears in the histories of 7-13-2510 and 7-13-2527 through 7-13-2529 although the changes made in Ch. 13 were not made in the section text.

7-13-2511. Prohibition on operation of cable TV systems. A television district organized under this part may not perform any acts or take any steps to construct or operate community antenna systems, commonly known and referred to as cable TV systems.

History: En. Sec. 13, Ch. 198, L. 1961; R.C.M. 1947, 70-420(part).

7-13-2512. Authorization for FM translator. (1) A television district may construct and operate a broadcast FM translator facility (88 to 108 megahertz) as provided in this section.

(2) (a) A request to provide FM translator services may be initiated by a petition signed by at least 51% of the registered electors who are residents of the television district and presented to the board of county commissioners

which initially established the district. The petition, its filing, and its processing are governed by 7-13-2503, 7-13-2504, and 7-13-2505.

(b) Upon receiving a certified petition, the board of county commissioners shall give notice and hold a hearing as provided in 7-13-2506 and 7-13-2507. After the hearing, the board of county commissioners shall approve or deny the petition by resolution. If the decision is to approve the petition, the resolution shall authorize the board of trustees of the district to provide the requested services and shall describe the proposed system, including the type of construction, proposed location, and estimated costs.

History: **En. Sec. 1, Ch. 13, L. 1979; En. Sec. 10, Ch. 479, L. 1979.**

Compiler's Comments

Codification. Sec. 6, Ch. 13, L. 1979, provided: "It is intended that section 1 be codified as an integral part of Title 7, chapter 13, part 25, and the provisions of Title 7, chapter 13, part 25, apply to section 1."

Codification. Sec. 11, Ch. 479, L. 1979, provided: "It is intended that section 10 be codified as an integral part of Title 7, chapter 13, part 25, and the provisions of Title 7, chapter 13, part 25, apply to section 10."

7-13-2513 through 7-13-2520 reserved.

7-13-2521. Appointment of board of trustees. The board of county commissioners, upon the creation of said district and as a part of the order creating the district, shall appoint a board of three trustees to administer the affairs of the district.

History: **En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part).**

7-13-2522. Qualifications for trustee. Each of said trustees shall be a resident of the district.

History: **En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part); amd. Sec. 3, Ch. 479, L. 1979.**

7-13-2523. Term of office. (1) The trustees so appointed upon creation of such district shall be appointed for staggered terms of 1, 2, and 3 years. If more than one county is involved, one of said trustees shall be appointed from the county containing that portion of the district with the fewest residents, and such trustee shall be given the 3-year term. Said trustees so appointed shall hold office for the term of their respective appointment or until their successors are appointed and qualified.

(2) At the end of the respective terms of said trustees, the board of county commissioners shall appoint a new trustee for a 3-year term.

History: **En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part); amd. Sec. 4, Ch. 479, L. 1979.**

7-13-2524. Vacancies. In case of a vacancy by death, resignation, removal from the district, or otherwise, a trustee shall be appointed by the board of county commissioners to fill such vacancy to the end of the term of such trustee.

History: **En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part).**

7-13-2525. Compensation of trustees. The board of trustees of the district shall serve without compensation but will be reimbursed for reasonable expenses incurred in the operation of the television district.

History: **En. Sec. 14, Ch. 198, L. 1961; R.C.M. 1947, 70-421.**

7-13-2526. Meetings of trustees. (1) The board of trustees shall meet once a month at a regular time and place to transact the business of the district. The time and place shall be fixed by the trustees, and any change in the time and place of meetings must be given by publication of notice in a newspaper most likely to give notice to the taxpayers within such district.

(2) All meetings shall be held at some place within the area of the television district. All such meetings shall be open in their entirety to the public.

History: **En. Sec. 16, Ch. 198, L. 1961; R.C.M. 1947, 70-423.**

7-13-2527. List of television owners. (1) A copy of the order creating the district shall be delivered to the county assessor of each county within the district.

(2) The assessor shall, on or before August 1 of any given year, prepare and certify a list of all persons owning television sets within such district and deliver a copy of such list to the board of trustees of said district.

History: **En. Sec. 10, Ch. 198, L. 1961; R.C.M. 1947, 70-417; amd. Sec. 3, Ch. 13, L. 1979; amd. Sec. 5, Ch. 479, L. 1979.**

7-13-2528. Financial administration of district. (1) The board of trustees shall, from any list prepared by the county assessor as required by 7-13-2527, remove the names of any persons who have claimed exemption under this part and shall prepare a budget for the expenses for the next year.

(2) The budget, together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this part, shall be presented by September 1 to the board of county commissioners, who shall levy the tax requested by said trustees. The board shall levy such tax in accordance with the request herein mentioned. In preparing the budget, the board of trustees shall maintain separate budgets for television services and for FM translator services and shall specify the tax to be levied on property owners for these services. The tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected.

(3) The county treasurer shall be the treasurer for said district and hold said taxes, as collected, in a separate fund to be disbursed by him upon warrants drawn by the trustees, at least two of whom shall sign any warrant for the disbursement of such funds by the county treasurer.

History: **(1), (2)En. Sec. 11, Ch. 198, L. 1961; amd. Sec. 1, Ch. 79, L. 1975; Sec. 70-418, R.C.M. 1947; (3)En. Sec. 12, Ch. 198, L. 1961; Sec. 70-419, R.C.M. 1947; R.C.M. 1947, 70-418, 70-419; amd. Sec. 4, Ch. 13, L. 1979; amd. Sec. 6, Ch. 479, L. 1979.**

7-13-2529. Exemption for nonbenefited taxpayers. (1) The taxpayers in the television district who do not receive the signal of the television translator station or who receive direct reception from the television station from which the television translator repeats a signal or receive service through the medium of a community antenna system on which they are a subscriber in good standing will be exempt from the payment of the tax for the support of the television services of the television district, provided they file an affidavit setting forth any of the grounds above mentioned. The affidavit shall be filed with the board of trustees, who shall upon the receipt of such affidavit have the names of such persons so exempted from the tax for television services stricken from the list of taxpayers certified to the board of county commissioners. The exempted persons shall not be liable for such tax.

(2) A similar exemption is available with respect to FM translator services. The procedure provided in subsection (1) shall be utilized for the FM exemption.

(3) Any person or persons who shall make a false or fraudulent claim for exemption as provided in this section shall be guilty of a misdemeanor.

History: En. Secs. 15, 17, Ch. 198, L. 1961; R.C.M. 1947, 70-422, 70-424; amd. Sec. 5, Ch. 13, L. 1979; amd. Sec. 7, Ch. 479, L. 1979.

7-13-2530 through 7-13-2540 reserved.

7-13-2541. Procedure to annex contiguous areas. The boundaries of a television district created by authority of this part may be altered and outlying areas be annexed from territory contiguous thereto in the following manner:

(1) A petition shall be signed by at least 51% of the registered electors who are residents of the area to be annexed.

(2) The petition shall designate the boundaries of the contiguous area to be annexed and ask that it be annexed to the existing television district.

(3) The petition shall be transmitted to the clerk and recorder, and the hearing and notice thereof shall be the same as provided by 7-13-2504 through 7-13-2507.

(4) After the hearing, the board of county commissioners shall adopt a resolution either annexing the area to the existing television district or denying the petition.

History: En. Sec. 1, Ch. 48, L. 1963; R.C.M. 1947, 70-426; amd. Sec. 8, Ch. 479, L. 1979.

7-13-2542. Procedure to abandon district. (1) If at any time a petition for abandonment of the television district, signed by at least 51% of the registered electors who are residents of the district, is filed with the board of trustees, the board of trustees shall forthwith notify the board or boards of county commissioners which created the district. Such board or boards of county commissioners shall by resolution immediately declare the district abandoned.

(2) All properties and money remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general fund of the county. If the abandoned district embraced areas in more than one county, properties and money remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general funds of such counties in proportion to the population of the portion of the district located in each county.

History: En. Sec. 18, Ch. 198, L. 1961; R.C.M. 1947, 70-425; amd. Sec. 9, Ch. 479, L. 1979.

Parts 26 through 40 reserved

Part 41

General Provisions
Related to Municipal Utility Services

7-13-4101. Authority to permit laying of utility mains. (1) The city or town council has power to permit the use of the streets and alleys of the city or town for the purpose of laying down gas, water, and other mains, but no excavations must be made for such purpose without the permission of the council or its authorized officer.

(2) The streets and alleys must be placed in as good condition by the person or corporation making the excavation as they were before the excavation was made and the mains laid down. In default thereof, the council may order the same to be done at the expense of such person or corporation.

History: En. Subd. 73, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.72, R.C.M. 1935; R.C.M. 1947, 11-975.

7-13-4102. Authority to acquire natural gas system — indebtedness permitted. (1) The city or town council has power to contract an indebtedness of a city or town upon the credit thereof by borrowing money or issuing bonds for the construction, purchase, or development of an adequate supply of natural gas and to construct or purchase a system of gaslines for the distribution thereof to the inhabitants of the city or town or vicinity.

(2) No money may be borrowed or bonds issued for the purposes specified in this section until the proposition has been submitted to the vote of the taxpayers of the city or town affected thereby and the majority vote cast in its favor.

History: En. Sec. 1, Ch. 128, l. 1927; re-en. Sec. 5039.85, R.C.M. 1935; amd. Sec. 22, Ch. 566, L. 1977; R.C.M. 1947, 11-988(part).

7-13-4103. Limitation on indebtedness for acquisition of natural gas system. The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed 11% of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes.

History: En. Sec. 1, Ch. 128, l. 1927; re-en. Sec. 5039.85, R.C.M. 1935; amd. Sec. 22, Ch. 566, L. 1977; R.C.M. 1947, 11-988(part).

7-13-4104. Inspection and measurement of gas, light, and electric or other power systems. The council of any incorporated city or town shall have power by ordinance to provide for and regulate the inspection and the measurement of gas, light, and electric or other power sold within its limits or brought into or carried through any such city or town.

History: En. Sec. 1, Ch. 57, L. 1907; Sec. 3260, Rev. C. 1907; re-en. Sec. 5040, R.C.M. 1921; re-en. Sec. 5040, R.C.M. 1935; R.C.M. 1947, 11-989.

7-13-4105. Regulation of vaults, cisterns, hydrants, pumps, sewers, and gutters. The city or town council has power to regulate the construction, use, and repair of vaults, cisterns, hydrants, pumps, sewers, and gutters.

History: En. Subd. 24, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.23, R.C.M. 1935; R.C.M. 1947, 11-926.

7-13-4106. Erection of poles, wires, rods, and cables. The city or town council has power to regulate or suppress the erection of poles and the stringing of wires, rods, or cables in the streets or alleys or within the limits of any city or town.

History: En. Subd. 43, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.42, R.C.M. 1935; R.C.M. 1947, 11-945.

7-13-4107. Protection of private waste disposal service in municipality. A municipality, as of January 1, 1979, that receives garbage and solid waste disposal services from a private motor carrier authorized by the public service commission to provide such service may not, by ordinance or otherwise, elect to provide exclusive garbage and solid waste service unless the municipality pays the private motor carrier fair market value for his equipment or unless the municipality delays commencing the public service for a period of 5 years from the date of the decision by the municipality to provide the garbage and solid waste services. The private motor carrier shall be given notice of the decision by the municipality to provide exclusive garbage and solid waste services no later than 10 days after the decision has been made by the municipality.

History: En. Sec. 1, Ch. 448, L. 1979.

Part 42

Public Sewer Systems

7-13-4201. Establishment of sewer systems. A sewer system may be established in a city or town, which system may be divided into public, district, and private sewers.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4202. Construction of public sewers. Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and materials, and under such regulations as may be prescribed by the council. There may be constructed such branches and extensions of sewers already constructed or to be constructed as may be considered expedient.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4203. Financing of public sewers. (1) To defray the cost of such public sewers, the city or town council may appropriate moneys therefor from the general or sewer fund or by availing itself of money derived from a bond issue authorized by the constitution and laws of the state.

(2) It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer, either at the time of its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(2).

7-13-4204. Rental charges for use of sewer system — election required. (1) Upon being petitioned by 5% of the qualified electors, the city council shall submit to a vote to the qualified electors, at the annual municipal election or at any special election called for that purpose, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals shall be paid:

(a) to provide such sewer fund; and/or

(b) to provide for the retirement of such bonds and/or the payment of the interest on such bonds; and/or

(c) for any purpose herein mentioned.

(2) If a majority of votes is cast in favor of such proposition, then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals should be paid and to change such scale of rentals from time to time as may be deemed advisable.

(3) The revenues provided in this section shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4205. Determination of rental charge. (1) The total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance, and repair of any such sewer system.

(2) For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4206. Procedure to collect rentals. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed or by such procedure as may be prescribed by the city or town council.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4207. Special fund for sewer rentals. (1) The funds received from the collection of sewer rentals shall be kept as a separate and distinct fund by the city treasurer, subject only to disbursement by order of the council.

(2) This fund shall be used for:

(a) the payment of the cost of management, maintenance, operation, and repair of the sewage system, including treatment and disposal works;

(b) for the creation of a sinking fund for the retirement of any indebtedness; and

(c) for the payment of interest on any such indebtedness.

(3) Any surplus in such fund may be used for the enlargement or replacement of the same and for the payment of the interest on any debt incurred for the construction of such sewage system, including sewage pumping, treatment, and disposal works, and for retiring such debt but shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those specified above.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(4).

7-13-4208. Procedure to challenge rates. Any 25 or more electors of a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory. The public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory. The municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(5).

Part 43

Municipal Sewage and/or Water Systems

7-13-4301. Establishment of sewage and water systems — election required. Any city or town, when authorized to do so by a majority vote of the qualified electors voting on the question, may:

(1) establish, build, construct, reconstruct, and/or extend:
(a) a storm and/or sanitary sewerage system; and/or
(b) a plant or plants for treatment or disposal of sewage therefrom; or
(c) a water supply and/or distribution system; or
(d) any combination of such systems; and
(2) operate and maintain such facilities for public use.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4302. Manner of calling and holding elections. (1) Any election under this part may be called by a resolution of the governing body, which it may adopt without being previously petitioned to do so.

(2) The question of building, constructing, reconstructing, or extending the system, plant, or plants and the question of issuing and selling revenue bonds for such purpose may be submitted as a single proposition or as separate propositions.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4303. Meaning of term qualified electors. In this part, "qualified electors" shall mean registered electors of the municipality.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4304. Authority to charge for services. (1) The governing body of a municipality operating a municipal water or sewer system shall fix and establish, by ordinance or resolution, and collect rates, rentals, and charges for the services, facilities, and benefits directly or indirectly afforded by the system, taking into account services provided and benefits received.

(2) Sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The charges may be fixed

on the basis of water consumption or any other equitable basis the governing body considers appropriate. The rates for charges may be fixed in advance or otherwise and shall be uniform for like services in all parts of the municipality. If the governing body determines that the sewage treatment or storm water disposal prevents pollution of sources of water supply, the sewer charges may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of the facilities and services.

(3) An original charge for the connecting sewerline between the lot line and the sewer main may be assessed when the connecting sewerline is installed.

(4) The water and sewer rates, charges, or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered.

History: Ap. p. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; Sec. 11-2219, R.C.M. 1947; Ap. p. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; Sec. 11-2217, R.C.M. 1947; Ap. p. Sec. 1, Ch. 411, L. 1973; Sec. 84-4726.1, R.C.M. 1947; R.C.M. 1947, 11-2217(part), 11-2219(part), 84-4726.1(part); amd. Sec. 25, Ch. 251, L. 1979.

7-13-4305. Consumers required to pay for services. No person, firm, or corporation shall be permitted to use said system unless they pay the full and established rate for said service.

History: En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4306. Effect of failure to pay charges. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water to such premises to be discontinued until such charges are paid.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4307. Establishment of amount of charges. The rates and charges established for the services and facilities afforded by this system shall be sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance and for the payment of the sums required to be paid into the sinking fund and for the accumulation of such reserves and the making of such expenditures for depreciation and replacement of said system as shall be determined necessary from time to time by the governing body or as shall have been covenanted in the ordinances and resolutions authorizing the outstanding bonds.

History: En. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; R.C.M. 1947, 11-2219(part).

7-13-4308. Change and readjustment of charges. The governing body shall have the right to change and readjust from time to time the rates and charges so fixed and established, provided the aggregate of such rates and charges shall always be sufficient to meet the requirements mentioned in 7-13-4307.

History: En. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; R.C.M. 1947, 11-2219(part).

7-13-4309. Procedure to collect sewer charges. (1) The sewer charges shall be collected by the treasurer.

(2) On or before January 15 of each year, notice shall be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to January 1 by the city or town. Said notice shall specify the assessment owing and in arrears at the time of giving such notice. Such notice shall be in writing and shall state the amount of such arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance and that unless the same is paid by July 1 thereafter, the same will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent as above specified. Such notice may be delivered to such owner personally or by letter addressed to such owner at the post-office address of such owner as recorded in the office of the county assessor.

(3) (a) Except as provided in subsection (3)(b), on March 1, the city treasurer or town clerk shall certify and file with the county assessor a list of all lots or parcels of real estate, giving the legal description thereof, to the owners of which notices of arrearage in payments were given as above specified and which arrearage still remains unpaid and stating the amount of such arrearage, including any penalty and interest. The county assessor shall insert the same as a tax against such lot or parcel of real estate.

(b) In cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall insert such delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

History: En. 84-4726.1 by Sec. 1, Ch. 411, L. 1973; R.C.M. 1947, 84-4726.1(part).

7-13-4310. Role of public service commission unaffected. Nothing contained in this part shall be construed to change or affect the powers and the duties of the public service commission of Montana prescribed in Title 69, chapters 1, 2, and 3.

History: En. Sec. 5, Ch. 98, L. 1955; R.C.M. 1947, 11-2220.1.

7-13-4311. Authorization to furnish water and sewer services to industrial consumers. (1) Subject to the provisions of subsection (2), the city or town council of any city or town within Montana that owns and operates a municipal water system and/or a municipal sewage system to furnish water and/or sewage services to the inhabitants of such city or town as a public utility shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewage system:

(a) to any person, factory, or other industry located within the corporate limits of such city or town; or

(b) to any person, factory, or other industry located outside the corporate limits of such city or town.

(2) (a) The services authorized by subsection (1) shall be furnished at reasonable rates, filed by the city or town council and approved by the public service commission.

(b) Delivery of water and delivery of sewage services by any such city or town to or for the use of any person, factory, or other industry located outside the corporate limits of such city or town shall be made within or at the boundary line of the corporate limits of such city or town or from any existing waterline or sewerline of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(1).

7-13-4312. Authorization to furnish water and sewer services to persons located outside municipality. The city council of any city within Montana that owns and operates a municipal water system and/or a municipal sewer system to furnish water and sewer services to the inhabitants of such city as a public utility shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewer system to the inhabitants or to any person, factory, industry, or producer of farm or other products located outside of the corporate limits of such city at reasonable rates filed by the city or town council and approved, when otherwise required by statute, by the public service commission. Such city council is further empowered to make collections for furnishing water and sewer services in the same manner as collections are made within the corporate limits.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(2).

7-13-4313. Illegal use of water or sewer system. Any person, firm, or corporation residing either inside or outside of the corporate limits of a city owning a municipal water system and/or a municipal sewer system which furnishes water or sewer services as a public utility who shall willfully turn on the waterline or sewerline after the same shall have been shut off by or under the direction of the city for nonpayment of water charges or sewer charges or who shall unlawfully take water from such water system or shall unlawfully make use of such sewer system shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(3).

7-13-4314. Annexation as a requirement for receiving service. Any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately, and not potentially, being serviced by the water or sewer service.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(4).

7-13-4315 through 7-13-4320 reserved.

7-13-4321. Water and sewer revenue bonds authorized. Any municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized to do so by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose and noticed and conducted in accordance with the provisions of [7-7-4227 through 7-7-4233].

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4322. Additional bonds for reconstruction and improvement. Any municipality having issued bonds payable from net revenues of its water and sewer systems or combined water and sewer system, whether under authority of 7-13-4321 or otherwise, may issue additional bonds, after authorization by the qualified electors in the manner provided in 7-13-4321, to finance the reconstruction and improvement of such system and the construction of additions thereto and may provide that such additional bonds shall be payable from said net revenues on a parity with the outstanding bonds of such previous issues, subject to any restrictions upon such issuance which may be imposed by the resolutions or ordinances authorizing said outstanding bonds; or the governing body may provide for the issuance of refunding bonds, without an election, to retire such outstanding bonds and may, if desired, combine such refunding issue with the issue authorized by the electors for reconstruction, improvements, and additions or may include the amount required for such refunding in the amount of such additional issue when submitted to the electors.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(7).

7-13-4323. Resolution authorizing bond issue — creation of sinking fund. Prior to the issuance of said bonds, the city council or other governing body of such municipality:

(1) shall adopt an ordinance or resolution authorizing the issuance and sale of said bonds; and

(2) must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(2).

7-13-4324. Details related to revenue bonds. (1) All bonds shall mature within 40 years from the date of the bonds and may be registered as to ownership of principal only with the treasurer of said municipality if so directed by the governing body.

(2) No bonds shall be sold for less than par.

(3) Each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory, or constitutional limitation upon the incurring of indebtedness.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4325. Maintenance of separate income accounts and books. After any municipality has issued and sold revenue bonds under this part, it must keep all income and revenues derived from the operation of the system separate and distinct from all other revenues and shall keep books and accounts for such system separate and distinct from all other books and accounts.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4326. Maintenance of sinking fund and investment of certain reserves. (1) The governing body shall maintain a sufficient balance of cash in the sinking fund for the payment of principal and interest currently due on outstanding revenue bonds but may in its discretion, subject to any restrictions contained in the ordinances or resolutions authorizing such bonds, invest money in said sinking fund or other net revenues held in reserve for bond payments, replacements, or depreciation in general obligation bonds of the United States of America or of the municipality itself.

(2) The income from all such investments shall remain part of the sinking fund or reserve from which the investment was purchased, and all such investments shall be collected at maturity or shall be sold when necessary to provide cash for the purposes of said sinking fund and reserve.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4327. Nature of indebtedness arising from revenue bonds. Any bonds and interest thereon shall be a valid claim of the holders thereof only against the sinking fund and the net income and revenues of the system pledged thereto and shall not constitute an indebtedness of the municipality within the meaning of any charter, statutory, or constitutional limitation upon the incurring of indebtedness.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4328. Pledge of income to payment of bonds. (1) At or before the issuance and sale of any such bonds, the governing body shall by resolution or ordinance set aside to such sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable and to accumulate and maintain reserves securing such payments in such amount as shall be deemed by the governing body to be necessary and expedient.

(2) The net income and revenues mentioned in subsection (1) shall be construed to mean all the gross income from said system less normal, reasonable, and current expenses of operation and maintenance thereof.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(3), (4).

7-13-4329. Bond payments to have priority with respect to net income. The payments mentioned in 7-13-4328 shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system. The governing body shall have power to establish from time to time the relative priority of the liens of successive issues of bonds upon said net income and revenues, subject to any restrictions contained in the ordinances or resolutions authorizing bonds of prior issues.

History: **En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(5).**

7-13-4330. Convenants with holders of bonds. Any municipality issuing bonds under this part shall have the right to covenant with the holders of the bonds as to:

(1) the purpose to which the proceeds received from the sale of the bonds shall be applied and the use and disposition thereof;

(2) the use and disposition of the income and revenues derived from the operation of the system;

(3) the issuance and sale of additional bonds payable from the income and revenues of the system;

(4) the operation and maintenance of the system;

(5) the insurance to be carried thereon and the disposition of the insurance money;

(6) its books of account and the inspection and audit thereof and its accounting methods;

(7) rates and charges for the services and facilities afforded by the system; and

(8) any other matters pertaining to the manner of handling this system and care and manner of paying the revenues on the bonds and interest.

History: **En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).**

7-13-4331. Buyback of outstanding revenue bonds. Subject to the provisions of any ordinances or resolutions authorizing the bonds, the governing body may apply net revenues:

(1) to the purchase of outstanding revenue bonds which are not yet prepayable according to their terms, at such price as will yield a net return to the municipality, computed to the earliest redemption date of such bonds; and

(2) for the redemption of any of said bonds as and when the same become prepayable according to their terms.

History: **En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).**

7-13-4332. Prohibition on obligations giving rise to tax liability. Nothing contained in this part shall be construed to permit the municipality to incur under the provisions thereof any obligation for the payment of which taxes may be levied.

History: **En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).**

7-13-4333. Registration of bonds. Any bonds issued under this part may be registered with the city treasurer of said municipality.

History: **En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).**

7-13-4334 through 7-13-4340 reserved.

7-13-4341. Refunding revenue bonds authorized. (1) Any such municipality, by ordinance or resolution adopted by its governing body and without an election, may issue and sell negotiable revenue bonds in the manner provided in 7-13-4321 through 7-13-4324, 7-13-4328, and 7-13-4329 to refund bonds previously issued for any of the foregoing purposes, whether issued under authority of 7-13-4321 or any other applicable law.

(2) Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any principal or interest due which can be paid from revenues then on hand.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4342. Details relating to refunding bonds. (1) Except as authorized in subsection (2), refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvements, and additions. The lien of such new bonds upon the revenues of the system or systems must be junior and subordinate to the lien of the outstanding bonds refunded under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(8).

7-13-4343. Exchange or sale of refunding bonds. (1) Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a price not less than par plus accrued interest.

(2) Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor except in accordance with the terms of such outstanding bond.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4344. Establishment of escrow account for proceeds of refunding bonds. (1) In any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company:

(a) which has its principal place of business within or without the state;

(b) which is a member of the federal reserve system; and

(c) which has a combined capital and surplus not less than $1 million.

(2) The proceeds shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient:

(a) to pay, when due, the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption; and

(b) to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date and any premium required for redemption on such date. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(3) The resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(9).

7-13-4345. Use of funds on hand. (1) Revenues and other funds on hand in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents.

(2) Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in 7-13-4344 to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(10).

Part 44

Water Supply and Regulation

7-13-4401. Water regulation. The city or town council has power to provide for the cleaning of waters, watercourses, and streams within the city or to alter, straighten, or widen the same and to provide for the draining and filling in of ponds, wells, or shafts on private property when necessary to the public health or public welfare.

History: En. Subd. 15, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.14, R.C.M. 1935; R.C.M. 1947, 11-917.

7-13-4402. Obtaining municipal water supply. The city or town council has power to adopt, enter into, and carry out means for securing a supply of water for the use of a city or town or its inhabitants.

History: En. Subd. 79, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.78, R.C.M. 1935; R.C.M. 1947, 11-981.

7-13-4403. Acquisition of private water supply system. (1) It is provided that whenever a franchise has been granted to or a contract made with any person or persons, corporation, or corporations and such person or persons, corporation, or corporations, in pursuance thereof or otherwise, have established or maintained a system of water supply or have valuable water rights or a supply of water desired by the city or town for supplying the city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply shall, by the passage of an ordinance, give notice to such person or persons, corporation, or corporations that it desires to purchase the plant and franchise and water supply of such person or persons, corporation, or corporations.

(2) The city or town shall have the right to so purchase the plant or water supply upon such terms as the parties agree.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-13-4404. Use of eminent domain powers to acquire water supply system. (1) In case agreement is not reached pursuant to 7-13-4403, then the city or town shall proceed to acquire the plant or water supply under the laws relating to the taking of private property for public use.

(2) Any city or town acquiring property under the laws relating to the taking of private property for public use shall make payment to the owner or owners of the plant or water supply, of the value thereof legally determined, within 6 months from and after final judgment is entered in the condemnation proceedings.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-13-4405. Acquisition of water rights and other necessary property. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure appropriate water rights and title to the same and the necessary real and person property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-13-4406. Control over territory occupied by water supply system — taxation and condemnation powers. Cities and towns shall have jurisdiction and control over the territory occupied by their public works; over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works; and also over the source of streams from which water is taken for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose, the city or town shall be authorized to condemn private property in the manner provided by law and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(4).

CHAPTER 14

TRANSPORTATION

Part 1 — General Provisions
Related to Local Government Transportation Services

Section

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Part 48 — Air Transportation

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Part 1

General Provisions Related to Local Government Transportation Services

7-14-101. Acquisition of property for controlled-access facility. The highway authorities of the counties, incorporated cities, and towns, respectively or in cooperation with each other or the state, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

History: **En. Sec. 8-218, Ch. 197, L. 1965; R.C.M. 1947, 32-4018(part).**

7-14-102. Allocation of state funds for public transportation. (1) (a) The department of community affairs shall allocate each year one-half of the funds appropriated for the purposes of this section among the cities and urban transportation districts of the state which operate or contract for the operation of general public transportation systems.

(b) (i) A city or urban transportation district is eligible for an allocation based upon the ratio of its local financial support for public transportation to the total local financial support for all general public transportation systems in the state. Local financial support shall be determined by dividing the city's or district's expenditure of local revenues for public transportation operations during the fiscal year by the mill value of the city or urban transportation district. Each applicant city and urban transportation district shall compute its expenditure of local revenues for public transportation operations for a fiscal year immediately following the end of such year and shall apply allocations received against that deficit.

(ii) A city or urban transportation district may not receive more than 50% of any year's expenditure of local revenues for public transportation operations as an allocation under this section.

(2) One-half of the funds appropriated for the purposes of this section shall be paid by the state treasurer to the counties of the state in the manner provided in 15-70-101(1)(a). Money distributed to counties under this section shall be used by the counties for highway or other transportation purposes.

(3) The department of community affairs may make rules for the keeping of accounts for and otherwise implementing this section.

History: **En. 11-4513 by Sec. 1, Ch. 515, L. 1975; amd. Sec. 1, Ch. 213, L. 1975; R.C.M. 1947, 11-4513; amd. Sec. 1, Ch. 559, L. 1979.**

Compiler's Comments

Distribution of funds in excess of those appropriated. Sec. 2, Ch. 559, L. 1979, provided: "Nothing in [this act] shall commit the state to distribute funds in excess of those specifically appropriated for this purpose."

Effective date. Sec. 3, Ch. 559, L. 1979, provided: "This act is effective on passage and approval." Approved April 12, 1979.

7-14-103. Use of county road equipment in certain municipalities. The board of county commissioners of any county may in its discretion authorize and permit the use of any county highway or road machinery or equipment, when not in use in any rural district, in connection with the construction, repair, and maintenance of streets, avenues, and alleys within any incorporated city or town of population of 4,000 or less located in such county.

History: **En. Sec. 1, Ch. 157, L. 1939; R.C.M. 1947, 16-1005.**

7-14-104. Costs of discontinuation of trafficway. Whenever a governing body discontinues, abandons, or vacates a street, alley, or road under part 26 or part 41, the costs of such process may be assessed against the petitioning property owner. Such costs may include costs of publication, engineering, and site viewing.

History: En. 11-2806 by Sec. 1, Ch. 72, L. 1977; R.C.M. 1947, 11-2806.

Part 2

Urban Transportation Districts

7-14-201. Purpose. This part authorizes the establishment of urban transportation districts to supply transportation services and facilities to district residents and other persons.

History: En. 11-4501 by Sec. 1, Ch. 355, L. 1975; R.C.M. 1947, 11-4501.

7-14-202. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of transportation of any district created under this part.

(2) "Commissioners" means the board of county commissioners or other governing body of a county.

(3) "District" means any transportation district created under this part.

History: En. 11-4502 by Sec. 2, Ch. 355, L. 1975; R.C.M. 1947, 11-4502.

7-14-203. Petition to create urban transportation district. Proceedings for creation of a transportation district may be initiated by a petition signed by not less than 20% of the registered electors who reside within the proposed district.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 338, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-14-204. Details relating to petition. The petition shall include a map showing the limits of the proposed district and shall be in the form provided in Title 13, chapter 27.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 339, Ch. 571, L. 1979.

7-14-205. Petition to be filed with election administrator — certificate. (1) The complete petition shall be filed with the election administrator.

(2) The election administrator shall, within 30 days thereafter, carefully examine the petition and attach to it a certificate under his official signature and the seal of his office. The certificate shall set forth:

(a) the total number of individuals who are registered electors within the proposed transportation district; and

(b) which and how many of the individuals whose names are on the petitions are qualified to sign the petition.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 340, Ch. 571, L. 1979.

7-14-206. Effect of insufficient number of signatures. If the petition is found to contain less than 20% of the signatures of the registered electors of the transportation district, the petition shall be declared void.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 341, Ch. 571, L. 1979.

7-14-207. Presentation of petition to board of county commissioners — hearing required. (1) Provided the petition contains the signatures of 20% of the qualified electors of the proposed transportation district, the county clerk shall present the petition and his certificate to the commissioners at their first meeting held after he has attached his certificate.

(2) The commissioners shall thereupon examine the petition and shall by resolution call for a public hearing on the creation of such district.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(2), (3).

7-14-208. Notice of hearing. (1) A notice of the public hearing shall be published in a newspaper having general circulation within the proposed transportation district once each week for at least 2 weeks, the last publication to be at least 2 weeks prior to the hearing. If there is no newspaper having general circulation within the proposed district, the notice of public hearing shall be posted in at least three public places within the proposed district for 2 weeks prior to the hearing.

(2) The notice shall state the time, date, place, and purpose of the hearing and describe the boundaries of the proposed district.

History: En. 11-4504 by Sec. 4, Ch. 355, L. 1975; R.C.M. 1947, 11-4504(2).

7-14-209. Hearing on petition. (1) At the time fixed for the public hearing, the commissioners shall hear all testimony offered in support of and in opposition to any petition and the creation of the district.

(2) The hearings may be adjourned from time to time for the determination of additional information or hearing petitioners or objectors, but no adjournment may exceed 2 weeks after the date originally noticed and published for the hearing.

History: En. 11-4504 by Sec. 4, Ch. 355, L. 1975; R.C.M. 1947, 11-4504(1).

7-14-210. Election on question of creating urban transportation district. (1) The commissioners, upon completion of the public hearing, shall proceed by resolution to refer the creation of such district to the persons qualified to vote on such proposition.

(2) The commissioners may designate in their resolution whether a special election shall be held or whether the matter shall be determined at the next general election. If a special election is ordered, the commissioners shall specify in their order the date for the election and the voting places and shall appoint and designate judges and clerks therefor.

History: En. 11-4505 by Sec. 5, Ch. 355, L. 1975; R.C.M. 1947, 11-4505(part).

7-14-211. Conduct of election on question of creating district. (1) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(2) At the election, the ballots shall contain the words:

☐ Transportation district — YES

☐ Transportation district — NO

History: En. 11-4505 by Sec. 5, Ch. 355, L. 1975; R.C.M. 1947, 11-4505(part); amd. Sec. 342, Ch. 571, L. 1979.

7-14-212. District to be governed by elected transportation board. The district shall be governed by a transportation board. The board shall consist of three members. After expiration of the term of the individuals appointed to the initial board, the board members shall be elected.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-213. Selection of initial transportation board. (1) The transportation board shall consist of three members appointed by a selection board composed of the commissioners and an equal number of representatives from the governing bodies of each incorporated city included or partially included in the district.

(2) The appointed members shall serve until the first county general election after their appointment.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-214. Election of members of transportation board. (1) Any registered elector in the district may file a petition of candidacy with the election administrator of the county where the district is located. No filing fee shall be required. All candidates shall file a nonpartisan petition for candidacy as provided in 13-14-113.

(2) The names of the six candidates receiving the highest number of votes in the primary election shall be placed on the ballots in the county general election.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 343, Ch. 571, L. 1979.

7-14-215. Term of office. (1) At the first election for membership on the transportation board, the candidate receiving the highest number of votes in the county general election shall receive a 4-year term on the board. The two candidates receiving the next highest number of votes in the county general election shall receive 2-year terms on the board.

(2) After the initial election, two seats on the board shall be filled at every county general election. The candidate receiving the highest number of votes shall serve a 4-year term and the candidate receiving the next highest number of votes shall serve a 2-year term.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-216. Vacancies on transportation board. The selection board shall fill all vacancies occurring on the transportation board.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-217. Notice of opening on board to be filled by appointment. (1) The selection board shall give public notice of its solicitation of applications for membership on the board.

(2) The notice shall be published in a newspaper having general circulation in the district, once each week for at least 2 weeks, the last publication to be at least 2 weeks before the appointment. If there is no newspaper having general circulation within the boundaries of the proposed district, the

notice of solicitation shall be posted in at least three public places within the boundaries of the proposed district for 2 weeks before the appointment.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-218. Compensation of transportation board members. The board members shall serve without pay except for necessary transportation expenses.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-219. Powers of transportation board. The board shall have all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the transportation district.

History: En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(part).

7-14-220. Employment of administrative officer. The board shall employ a qualified administrative officer for the district. The board shall give public notice of its solicitation of applications for a qualified administrative officer.

History: En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(2).

7-14-221. Area of service. The district shall primarily serve the residents within the district boundaries but may authorize service outside the district boundaries where deemed appropriate.

History: En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(part).

7-14-222 through 7-14-230 reserved.

7-14-231. Transportation district budget. The board shall annually present its budget to the commissioners at the regular budget meetings as prescribed by law and therewith certify the amount of money necessary and proper for the ensuing year.

History: En. 11-4508 by Sec. 8, Ch. 355, L. 1975; R.C.M. 1947, 11-4508(part).

7-14-232. Mill levy authorized — limitation. (1) The commissioners shall annually, at the time of levying county taxes, fix and levy a tax in mills upon all property within said transportation district clearly sufficient to raise the amount certified by the board.

(2) The tax so levied for all district purposes other than payment of bonded indebtedness shall not in any year exceed 12 mills on each dollar of taxable valuation of property within said district.

History: En. 11-4508 by Sec. 8, Ch. 355, L. 1975; R.C.M. 1947, 11-4508(part).

7-14-233. Collection of tax — role of county treasurer. (1) The procedure for the collection of the tax shall be in accordance with the existing laws of the state of Montana.

(2) The funds collected under the tax levy shall be held by the county treasurer.

(3) The county treasurer shall be, ex officio, the treasurer for the transportation district and shall keep a detailed account of:

(a) all tax money paid into the fund;

(b) all other money from any source received by the district; and

(c) all payments and disbursements from the fund.

History: **En. 11-4509 by Sec. 9, Ch. 355, L. 1975; R.C.M. 1947, 11-4509(part).**

7-14-234. Warrants to be used for payments. Funds shall be paid out on warrants issued by direction of the board and signed by a majority of its membership.

History: **En. 11-4509 by Sec. 9, Ch. 355, L. 1975; R.C.M. 1947, 11-4509(part).**

7-14-235. Transportation district bonds authorized. A transportation district may borrow money by the issuance of general obligation or revenue bonds or a combination thereof to provide funds for the district.

History: **En. 11-4510 by Sec. 10, Ch. 355, L. 1975; R.C.M. 1947, 11-4510(part).**

7-14-236. Limitation on bonded indebtedness. The amount of bonds issued to provide funds for the district and outstanding at any time shall not exceed 5% of taxable property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

History: **En. 11-4510 by Sec. 10, Ch. 355, L. 1975; R.C.M. 1947, 11-4510(part).**

7-14-237 through 7-14-240 reserved.

7-14-241. Procedure to enlarge district. (1) The boundaries of any transportation district may be enlarged if 51% of the qualified electors of the area to be added to the existing district sign a petition requesting addition to such district.

(2) However, each addition must be approved by a majority vote of the transportation board.

(3) All property within any addition to the district shall be subject to all existing indebtedness of the district.

History: **En. 11-4511 by Sec. 11, Ch. 355, L. 1975; R.C.M. 1947, 11-4511.**

7-14-242. Petition for dissolution of district. Any transportation district may be dissolved upon presentation to the county commissioners of a petition signed by at least 51% of the qualified voters of such district.

History: **En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).**

7-14-243. Examination of petition — hearing. (1) Upon the filing of such petition, the commissioners shall carefully examine the petition.

(2) (a) If it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the commissioners shall by resolution call for a public hearing on the dissolution of such transportation district.

(b) If such petition is found by the commissioners to be lacking in the number of signatures, the commissioners shall declare the petition void.

History: **En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).**

7-14-244. Notice of hearing on question of dissolution of district. (1) A notice of the hearing required by 7-14-243(2)(a) shall be published in a newspaper having general circulation in the transportation district once each week for at least 2 weeks, the last publication to be at least 2 weeks before the hearing. If there is no newspaper having general circulation in the district, the notice of the hearing shall be posted in at least three public places in the district for 2 weeks before the hearing.

(2) The notice shall state the time, date, place, and purpose of the hearing.

History: **En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(2).**

7-14-245. Hearing on question of dissolution of district — decision. (1) If upon such hearing the commissioners find that the district is not indebted beyond funds immediately available to extinguish all of its debts an obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district.

(2) Such order shall be filed of record, and the dissolution shall be effective for all purposes 6 months after the date of filing the order of dissolution, provided that at or before such time, the board of said district certifies to the county commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with proof thereof.

History: **En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).**

7-14-246. Distribution of district assets after dissolution. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged, or irrevocably settled shall be evenly divided between the county and any cities within or partially within the dissolved district.

History: **En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).**

Part 3

Local Option Motor Fuel Tax

7-14-301. Local option motor fuel tax authorized. (1) The people of a county by initiative may impose a motor fuel excise tax of not more than 2 cents per gallon upon gasoline distributed within the county for use in motor vehicles operated upon public streets and roads.

(2) A county imposing the tax authorized under subsection (1) shall provide a means to provide refunds to persons who have paid the tax on motor fuel for uses other than on public streets and roads.

(3) The term "gasoline" has the meaning ascribed to it in 15-70-201.

History: **En. Sec. 1, Ch. 621, L. 1979.**

7-14-302. Use of local motor fuel tax revenue. (1) A county or municipality receiving revenue from the tax authorized by 7-14-301 shall use the revenue derived only for the construction, reconstruction, maintenance, and repair of public streets and roads.

(2) Two percent of the motor fuel tax revenue collected in a county is allocated to the county governing body for use in administering the tax; one percent of the motor fuel tax revenue in a county is to be reimbursed at the point of collection for use in administering the tax.

History: **En. Sec. 2, Ch. 621, L. 1979.**

7-14-303. Allocation of revenue from county-imposed motor fuel tax. Revenue derived from a motor fuel tax imposed by a county under

7-14-301 must be divided among the county and municipalities in the county in the proportion of motor vehicles registered in the county outside of the municipalities to those registered within the municipalities during the preceding year.

History: **En. Sec. 3, Ch. 621, L. 1979.**

7-14-304. Penalties. Penalties for violation of this part shall be the same as provided in 15-70-232.

History: **En. Sec. 4, Ch. 621, L. 1979.**

Parts 4 through 20 reserved

Part 21

General Provisions Related to County Roads

7-14-2101. General powers of county relating to roads and bridges. (1) The board of county commissioners, under such limitations and restrictions as are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) levy taxes therefor as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in such part as may be agreed upon between the boards of the counties concerned;

(ii) levy taxes therefor as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) place such a project in the budget and levy taxes therefor as provided by law.

(2) (a) Unless the context requires otherwise, county road means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with this chapter.

(b) Unless the context requires otherwise, bridge includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

History: **(1)En. Subd. 4, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.3, R.C.M. 1935; amd. Sec. 12-101, Ch. 197, L. 1965; Sec. 16-1004, R.C.M. 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 16-1004(part), 32-2203(4), (11).**

7-14-2102. General powers relating to county roads. Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts.

History: **En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(4).**

7-14-2103. Duties of county commissioners concerning county roads. (1) Each board of county commissioners has general supervision over the county roads within the county.

(2) Each board shall survey, view, lay out, record, open, work, and maintain county roads which are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(part).

7-14-2104. Repealed. Sec. 1, Ch. 211, L. 1979.

7-14-2105. Reports to department of highways. (1) Each board of county commissioners shall make reports relating to roads under its supervision which are requested by the department of highways.

(2) The board and the road supervisor of a county and all other officers who may have the care and supervision of the public highways and bridges shall, upon the written request of the department, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

History: (1)En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; Sec. 32-2801, R.C.M. 1947; (2)En. Sec. 5-115, Ch. 197, L. 1965; amd. Sec. 107, Ch. 316, L. 1974; Sec. 32-2815, R.C.M. 1947; R.C.M. 1947, 32-2801(5), 32-2815.

7-14-2106. Parking regulations in unincorporated places. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to establish by resolution parking regulations for the purpose of regulating the parking of motor vehicles in unincorporated towns and villages.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.1, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1951; R.C.M. 1947, 16-1002(part).

7-14-2107. Acquisiton of right-of-way. (1) Each board of county commissioners shall contract, agree for, purchase, or otherwise lawfully acquire right-of-way for county roads over private property. It may institute proceedings under Title 70, chapter 30, paying for such right-of-way from the county road fund.

(2) Each board shall acquire rights-of-way for county roads and discontinue or abandon them only upon proper petition therefor.

(3) By taking or accepting interests in real property for county roads, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802, R.C.M. 1947; (2), (3)En. Sec. 8-201, Ch. 197, L. 1965; Sec. 32-4001, R.C.M. 1947; R.C.M. 1947, 32-2802(part), 32-4001.

7-14-2108. Recording of instruments related to acquisition of right-of-way. (1) When a right-of-way is voluntarily given or purchased, an instrument in writing conveying the right-of-way and incidents thereto must be signed and acknowledged by the person making it. It must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right-of-way is condemned, a certified copy of the judgment of the court must be made. It must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments shall particularly describe the land.

History: En. Sec. 8-212, Ch. 197, L. 1965; R.C.M. 1947, 32-4012.

7-14-2109. Transfer to state of county responsibility for right-of-way. A board of county commissioners shall transfer its control over and responsibility for a county road when the department of highways notifies it that:

(1) a federal or state highway has been established and definitely located over a county road;

(2) funds are available for immediate construction of the highway;

(3) the highway will be improved and maintained by the department.

History: En. Sec. 8-216, Ch. 197. L. 1965; amd. Sec. 149, Ch. 316, L. 1974; R.C.M. 1947, 32-4016.

7-14-2110. Preparation of plat books. Each board of county commissioners may in its discretion order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable platbooks. Each board shall have recorded in it with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map of the road, and a record of all proceedings with reference to the road.

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; R.C.M. 1947, 32-2803(1).

7-14-2111. Layout of roads. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L. 1965; R.C.M. 1947, 32-2809.

7-14-2112. Width of roads. (1) The width of all county roads, except bridges, alleys, or lanes, must be 60 feet unless a greater or smaller width is ordered by the board of county commissioners on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least 20 feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road established or used as such prior to December 31, 1966.

History: En. Sec. 5-108, Ch. 197, L. 1965; R.C.M. 1947, 32-2808.

7-14-2113 through 7-14-2120 reserved.

7-14-2121. County road districts. (1) The board of county commissioners may in its discretion divide the county into suitable road districts and place each district in the charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district.

(2) If the board does not divide the county into districts, the county itself shall constitute one road district.

History: **En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(part).**

7-14-2122. County road supervisor. (1) Each board of county commissioners may in its discretion employ a competent road supervisor, who shall serve during the pleasure of the board. In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(2) Under the direction and control of the board, he shall:

(a) prescribe the times and places for all work to be done on the county roads;

(b) report any delinquency or inefficiency of any person employed on any road;

(c) perform other duties which are prescribed by the board.

History: **En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; R.C.M. 1947, 32-2803(2), (3).**

7-14-2123. Acquisition of machinery and materials. (1) Out of the county road fund, each board of county commissioners may:

(a) purchase and operate grading and other machinery necessary or desirable for the improvement of the county roads;

(b) acquire deposits or quarries of suitable road-building material by purchase, condemnation, or lease.

(2) Each board may also acquire such road-building material by gift.

History: **En. Sec. 5-106, Ch. 197, L. 1965; R.C.M. 1947, 32-2806(1), (2).**

7-14-2124. Disposition of surplus crushed rock and gravel. (1) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads may be sold by the board of county commissioners at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county.

(2) The proceeds of any such sale shall be paid into the county road fund.

History: **En. Sec. 5-106, Ch. 197, L. 1965; R.C.M. 1947, 32-2806(3).**

7-14-2125. Inspection of roads and work on roads. (1) The board of county commissioners may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: **En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973; R.C.M. 1947, 32-2805(1), (3).**

7-14-2126. Compensation for making inspections. The person or persons making the inspections authorized by 7-14-2125 shall receive the sum of $33 per day and actual expenses if he receives no other compensation for that day and is not on an annual salary. The claims shall be audited and allowed in the same manner as other claims against the county.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973; R.C.M. 1947, 32-2805(2).

7-14-2127. Temporary limitation or prohibition of traffic. Each board of county commissioners may in its discretion limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part thereof when it is necessary in order to preserve or repair such roads.

History: En. Sec. 5-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2802(4).

7-14-2128. Designation of emergency area near construction project. (1) A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

(2) Notice of the designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for the designation. The board shall post the area or roads affected with adequate signs.

(3) The board shall remove the emergency designation within 30 days after the cessation of the increased traffic.

History: (1)En. Sec. 1, Ch. 118, L. 1963; Sec. 32-317, R.C.M. 1947; redes. 32-2816 by Sec. 2, Ch. 316, L. 1974; Sec. 32-2816, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 118, L. 1963; Sec. 32-318, R.C.M. 1947; amd. and redes. 32-2817 by Sec. 3, Ch. 316, L. 1974; Sec. 32-2817, R.C.M. 1947; R.C.M. 1947, 32-2816, 32-2817.

7-14-2129. Control of livestock in emergency area. (1) A person who owns or has custody of livestock may not permit the livestock to run upon the emergency area unless the livestock is under herd in transit across the emergency area in the custody of an attendant.

(2) A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector of the department of livestock or a deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector, and the usual inspection fees and mileage shall be paid by the owner of such livestock.

(3) A person who violates subsection (1) is guilty of a misdemeanor and shall be fined not less than $10 or more than $50 for each violation.

History: (1)En. Sec. 3, Ch. 118, L. 1963; Sec. 32-319, R.C.M. 1947; amd. and redes. 32-2818 by Sec. 4, Ch. 316, L. 1974; Sec. 32-2818, R.C.M. 1947; (2)En. Sec. 4, Ch. 118, L. 1963; Sec. 32-320, R.C.M. 1947; amd. and redes. 32-2819 by Sec. 5, Ch. 316, L. 1974; Sec. 32-2819, R.C.M. 1947; (3)En. Sec. 5, Ch. 118, L. 1963; Sec. 32-321, R.C.M. 1947; amd. and redes. 32-2820 by Sec. 6, Ch. 316, L. 1974; Sec. 32-2820, R.C.M. 1947; R.C.M. 1947, 32-2818, 32-2819, 32-2820.

7-14-2130. Control of the movement of livestock on or near county roads. (1) Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Where a county road connects with a state or federal highway which is fenced on both sides, the board of county commissioners may construct and maintain extensions of the fence across the right-of-way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

(3) Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802, R.C.M. 1947; (2)En. Sec. 5-110, Ch. 197, L. 1965; Sec. 32-2810, R.C.M. 1947; (3)En. Sec. 5-111, Ch. 197, L. 1965; Sec. 32-2811, R.C.M. 1947; R.C.M. 1947, 32-2802(part), 32-2810, 32-2811.

7-14-2131. Reseeding of right-of-way. (1) Whenever the natural sod cover on right-of-way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board of county commissioners shall require that such disturbed areas be seeded to an adaptable perennial grass or combination of perennial grasses and legumes. Every effort shall be made to establish a sod cover on the disturbed area.

(2) All seed used shall meet certified standards.

(3) Time and method of seeding, fertilizing practices, and grass species shall be those recommended by the Montana extension service.

History: En. Sec. 5-113, Ch. 197, L. 1965; R.C.M. 1947, 32-2813.

7-14-2132. Control of weeds along roads and highways. (1) The board of weed control and weed seed extermination supervisors shall control noxious weeds on the county roads.

(2) If the department of highways does not control noxious weeds on state and federal highways in any county, the supervisors shall control them. Upon presentation by the supervisors of a verified account of the expenses incurred, the costs of control shall be paid by the department.

History: En. Sec. 5-114, Ch. 197, L. 1965; amd. Sec. 106, Ch. 316, L. 1974; R.C.M. 1947, 32-2814.

7-14-2133. Removal of obstructions on county roads. (1) Whenever any county road becomes obstructed, the board of county commissioners, or the county surveyor if he is in charge, shall remove the obstruction upon being notified thereof.

(2) Nothing in this section shall be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

History: En. Sec. 5-204, Ch. 197, L. 1965; R.C.M. 32-2904(part).

7-14-2134. Removal of highway encroachment. (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

History: **En. Sec. 11-105, Ch. 197, L. 1965; R.C.M. 1947, 32-4405.**

7-14-2135. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or the person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) by leaving it at his place of residence if such person resides in the county; or

(b) by posting it on the encroachment if such person does not reside in the county.

History: **En. Sec. 11-106, Ch. 197, L. 1965; R.C.M. 1947, 32-4406.**

7-14-2136. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately or removal is not diligently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of $10 for each day the same continues.

History: **En. Sec. 11-107, Ch. 197, L. 1965; R.C.M. 1947, 32-4407.**

7-14-2137. Legal actions to remove encroachments or recover costs. (1) (a) If the encroachment is denied, the road supervisor shall commence an action in the proper court to abate the same as a nuisance.

(b) If he recovers judgment, he may have his costs and $10 for every day such nuisance remains after notice.

(2) (a) If the encroachment is not denied and is not removed for 5 days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of the land or of the person owning or controlling the encroachment.

(b) He may recover the expense of removal, $10 for each day the encroachment remains after notice, and costs in an action brought for that purpose.

History: **En. Sec. 11-108, Ch. 197, L. 1965; R.C.M. 1947, 32-4408.**

7-14-2138. Prosecution by county attorney. (1) The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions provided in parts 21 through 28 in the name of the state of Montana.

(2) All penalties shall be paid into the general fund of the county.

History: **En. Sec. 11-109, Ch. 197, L. 1965; R.C.M. 1947, 32-4409.**

7-14-2139. Procedure to make excavations across highway. (1) (a) Any person contemplating the excavation or construction of any ditch, dike, flume, or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor, or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board.

(2) Any such bridge shall be maintained by the county.

History: En. Sec. 11-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4403(1), (2).

7-14-2140. Prevention of water flow over highway. Any person obtaining a construction permit or any person using the water of a ditch, dike, flume, or canal referred to in 7-14-2139 shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4403(3).

7-14-2141. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume, or canal or stores, distributes, or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, upon notification by the board of county commissioners, road supervisor, or county surveyor of the district where such overflow occurred, must repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning, or using such ditch or flume who permits an overflow is liable as provided in 45-8-111.

History: En. Sec. 11-104, Ch. 197, L. 1965; R.C.M. 1947, 32-4404.

Part 22

General Provisions Related to Bridges

7-14-2201. Maintenance and control of bridges. (1) Each board of county commissioners shall maintain all public bridges other than those maintained by the department of highways.

(2) The board shall manage and control all bridges referred to in this part. It shall direct the method and time of making repairs, planking, replanking, paving, and repaving.

(3) (a) Whenever any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board, or the county surveyor if he is in charge, shall repair the bridge upon being notified thereof.

(b) Nothing in this subsection shall be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

(4) In this part "public bridges" means public bridges located in towns or cities and bridges located on county roads maintained by the county.

History: (1)En. Sec. 5-201, Ch. 197, L. 1965; amd. Sec. 108, Ch. 316, L. 1974; Sec. 32-2901, R.C.M. 1947; (2)En. Sec. 5-205, Ch. 197, L. 1965; Sec. 32-2905, R.C.M. 1947; (3)En. Sec. 5-204, Ch. 197, L. 1965; Sec. 32-2904, R.C.M. 1947; R.C.M. 32-2901, 32-2904(part), 32-2905(1); amd. Sec. 1, Ch. 194, L. 1979.

7-14-2202. Construction and maintenance of bridges crossing county lines. Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965; R.C.M. 1947, 32-2906.

7-14-2203. Repairs to streambeds, watercourses, and banks. The board of county commissioners may also make repairs to streambeds and watercourses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

History: En. Sec. 5-205, Ch. 197, L. 1965; R.C.M. 1947, 32-2905(2).

7-14-2204. Construction and maintenance of bridges in municipalities. (1) Each board of county commissioners shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half, to be determined by the board, of the cost of planking, replanking, paving, or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

(3) Such bridges and all persons on them shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: (1), (2)En. Sec. 5-202, Ch. 197, L. 1965; Sec. 32-2902, R.C.M. 1947; (3)En. Sec. 5-205, Ch. 197, L. 1965; Sec. 32-2905, R.C.M. 1947; R.C.M. 1947, 32-2902, 32-2905(3).

7-14-2205. Construction of bridge in municipality — election. (1) Before undertaking the construction in any city or town of any bridge, the cost of which shall exceed $10,000, the board of county commissioners shall submit to the qualified electors of the county at a general or special election the question of whether the bridge shall be constructed and its cost paid by the county.

(2) (a) If the electors vote in favor of construction, the board may issue and sell bonds of the county to the amount authorized for the construction of the bridge. Bonds shall be issued under such regulations as apply to other bonds of the county.

(b) The bridge shall be constructed using the proceeds of such sale.

(3) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in 7-14-2503.

History: En. Sec. 5-203, Ch. 197, L. 1965; R.C.M. 1947, 32-2903.

7-14-2206. Use of bridges in municipalities by street railway. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth or more than one-half of the cost of construction of the bridge.

(2) During the time the bridge is used by the railway, the railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth or more than one-half) as is determined by the board.

History: En. Sec. 7-103, Ch. 197, L. 1965; R.C.M. 1947, 32-3603.

Part 23

County Road Superintendent

7-14-2301. County road superintendent — appointment and compensation. (1) In counties without a county surveyor, each board of county commissioners may appoint a county road superintendent. He shall have such duties, powers, and responsibilities as are set forth in this part. After his appointment, the county road superintendent shall serve at the pleasure of and under the direction and control of the board. He shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of his duties.

(2) He shall receive such compensation as is determined by the board.

History: Ap. p. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; Sec. 32-2803, R.C.M. 1947; Ap. p. Sec. 5-301, Ch. 197, L. 1965; Sec. 32-3001, R.C.M. 1947; R.C.M. 1947, 32-2803(4), 32-3001.

7-14-2302. Duties of county road superintendent. (1) Under the direction and supervision of the board of county commissioners, the superintendent shall furnish plans and specifications for highway or bridge work. He shall be chairman of all boards of road viewers.

(2) Under such direction and supervision, he shall also:

(a) take charge of all roads, bridges, and causeways under the jurisdiction of the county;

(b) open all new roads when they are duly established and ordered to be opened by the board;

(c) perform, at the time and in the manner directed by the board, whatever shall be lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L. 1965; R.C.M. 1947, 32-3002.

7-14-2303. Equipment used by road superintendent. (1) Upon the requisition of the superintendent, the board of county commissioners shall furnish any necessary equipment, tools, and implements and pay for them out of the county road fund.

(2) The superintendent shall preserve the equipment, tools, and implements and shall not allow them to be used except on public highways. At the expiration of his term of office or upon his removal therefrom, he must turn over all equipment, tools, and implements to his successor or to the board.

History: En. Sec. 5-305, Ch. 197, L. 1965; R.C.M. 1947, 32-3005.

7-14-2304. Employment of workers and hiring of equipment. Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board of county commissioners for an 8-hour day.

History: En. Sec. 5-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3006.

7-14-2305. Construction of drains and ditches to preserve roads. (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of $50, to be recovered by the superintendent or board of county commissioners in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which, if it finds the complaint valid, may pay damages out of the county road fund.

History: **En. Sec. 5-307, Ch. 197, L. 1965; R.C.M. 1947, 32-3007.**

7-14-2306. Records and receipts to be maintained. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. He shall give to each person performing work or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid therefor.

History: **En. Sec. 5-303, Ch. 197, L. 1965; R.C.M. 1947, 32-3003.**

7-14-2307. Payment of claims upon presentation of superintendent's certificate. Upon the presentation of any certificate issued by the superintendent and verification of it by the holder as in other cases of claims against the county, the board of county commissioners shall have a warrant issued for the amount of the certificate, drawn on the treasury against the county road fund.

History: **En. Sec. 5-304, Ch. 197, L. 1965; R.C.M. 1947, 32-3004(part); amd. Sec. 1, Ch. 253, L. 1979.**

7-14-2308. Superintendent's report. At least once each year and more often if required by the board of county commissioners, the superintendent shall file a report with the board detailing the activities and expenditures of his office and containing any other information the board requires. At the first monthly or quarterly meeting held after filing of a superintendent's report, the board of county commissioners shall examine it.

History: **En. Sec. 5-304, Ch. 197, L. 1965; R.C.M. 1947, 32-3004(part); amd. Sec. 2, Ch. 253, L. 1979.**

Part 24

County Road and Bridge Contracts

7-14-2401. Authority to enter contracts. (1) Subject to the limitations and restrictions provided in the code for the letting of contracts, each board may let by contract the construction, maintenance, and improvement of county roads and the construction, maintenance, or repair of bridges when the amount of work to be done exceeds the sum of $1,000.

(2) As used in this part, unless the context requires otherwise, "board" means the board of county commissioners.

History: **(1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802; R.C.M 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-2802(2).**

7-14-2402. Contracts for county roads. When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds $1,000, the work may in the discretion of the board be let by contract unless the board shall find that such work may be otherwise done at less cost.

History: En. Sec. 9-201, Ch. 197, L. 1965; R.C.M. 1947, 32-4201(1).

7-14-2403. Advertisement for bids. Before any contract authorized by 7-14-2402 shall be let, the board shall advertise for bids at least once a week for 2 consecutive weeks in a newspaper of general circulation in the county.

History: En. Sec. 9-201, Ch. 197, L. 1965; R.C.M. 1947, 32-4201(2).

7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract shall be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4 and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-202, Ch. 197, L. 1965; R.C.M. 1947, 32-4202.

7-14-2405. Performance bond to be given by successful bidder. Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-203, Ch. 197, L. 1965; R.C.M. 1947, 32-4203.

7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the department of highways has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of Title 18, chapter 1, part 2.

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-204, Ch. 197, L. 1965; amd. Sec. 151, Ch. 316, L. 1974; R.C.M. 1947, 32-4204.

Part 25

Financial Management of County Roads and Bridges

7-14-2501. General road tax authorized. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than 12 mills, except in fourth, fifth, sixth, and seventh class counties, which may levy not more than 15 mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders, as the board may direct.

(2) This section shall not apply to incorporated cities and towns which by ordinance provide for the levy of a like tax for road, street, or alley purposes.

(3) All money collected under this section shall belong to the county road fund.

History: En. Sec. 7-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 83, L. 1967; amd. Sec. 1, Ch. 199, L. 1971; R.C.M. 1947, 32-3601.

7-14-2502. Special bridge tax authorized. (1) Each board may levy a special tax not to exceed 4 mills on all taxable property in the county for the purpose of constructing, maintaining, and repairing free public bridges, which includes those bridges within the municipalities.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than 4,000 and the taxable value of property in that county is $20 million or less, the board may, if necessary, levy 1 mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than 6,000 and the taxable value of property in that county is not less than $20 million or more than $40 million, the board may, if necessary, levy 2 mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over, or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund.

History: En. Sec. 7-102, Ch. 197, L. 1965; amd. Sec. 1, Ch. 57, L. 1973; R.C.M. 1947, 32-3602; amd. Sec. 1, Ch. 283, L. 1979.

7-14-2503. Special municipal bridge tax authorized. Each board may levy a special tax not to exceed 5 mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L. 1965; R.C.M. 1947, 32-3604.

7-14-2504. Additional road and bridge construction tax — election required. (1) Each board may make an additional levy upon the taxable property in the county of 10 mills or less for constructing public highways and bridges.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form, inserting the number of mills to be levied and the name of the county:

"Shall there be an additional levy of .... mills upon the taxable property in the county of ...., state of Montana, for the purpose of constructing public highways and bridges?

☐ YES
☐ NO".

(3) A majority of the votes cast shall be necessary to permit the additional levy, which shall be collected in the same manner as other road taxes.

History: En. Sec. 7-105, Ch. 197, L. 1965; R.C.M. 1947, 32-3605.

7-14-2505. Allocation of proceeds of oil and gas leases and reserved royalty interests to county road fund. Each board of county commissioners may allocate to the county road fund not more than 50% of the proceeds from oil and gas leases entered into and royalty interests reserved under Title 82, chapter 10, part 2.

History: En. Sec. 1, Ch. 105, L. 1979.

7-14-2506 through 7-14-2510 reserved.

7-14-2511. Creation of county motor vehicle fund. When collected by the treasurer of the county in which a motor vehicle is registered, all license and registration fees for which there is no specific provision as to disposition of the fee shall be credited to the county motor vehicle fund.

History: En. Sec. 7-201, Ch. 197, L. 1965; R.C.M. 1947, 32-3701; amd. Sec. 3, Ch. 253, L. 1979.

7-14-2512. City and county road funds. (1) (a) The county treasurer shall segregate from the county motor vehicle fund and designate as the "city road fund" 50% of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city or town.

(b) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the county road fund.

History: (1)(a), (2)En. Sec. 7-202, Ch. 197, L. 1965; amd. Sec. 1, Ch. 89, L. 1967; amd. Sec. 1, Ch. 467, L. 1975; Sec. 32-3702, R.C.M. 1947; (1)(b)En. Sec. 7-203, Ch. 197, L. 1965; amd. Sec. 2, Ch. 467, L. 1975; Sec. 32-3703, R.C.M. 1947; R.C.M. 1947, 32-3702, 32-3703(1).

7-14-2513. Use of county road fund. The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

History: En. Sec. 7-206, Ch. 197, L. 1965; R.C.M. 1947, 32-3706.

7-14-2514. Limit on expenditures for road district. (1) The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board of county commissioners to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road fund necessary for the use of such district.

(2) The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: En. Sec. 5-112, Ch. 197, L. 1965; R.C.M. 1947, 32-2812.

7-14-2515 through 7-14-2520 reserved.

7-14-2521. Bond financing authorized. Subject to the limitations and restrictions provided in the constitution and code, each board of county commissioners may issue bonds upon the faith and credit of the county for the construction or improvement of county roads, state highways, and bridges.

History: En. Sec. 5-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2802(3).

7-14-2522. County road and bridge bonds authorized. (1) Each board may issue, negotiate, and sell coupon bonds on the credit of the county:

(a) to construct or improve or acquire rights-of-way for public highways or bridges;

(b) to refund, pay, and redeem optional, redeemable, or maturing highway or bridge bonds when there are not sufficient funds available and it is deemed in the best interests of the county to refund the bonds.

(2) The bonds shall be issued as provided in 7-7-2201.

History: En. Sec. 7-301, Ch. 197, L. 1965; R.C.M. 1947, 32-3801(1), (3).

7-14-2523. Term of county road and bridge bonds. (1) Bonds issued under 7-14-2522(1) may not be issued for a longer term than 20 years.

(2) A bond issued under 7-14-2522(1)(b) may not be issued for a term longer than 10 years, except that:

(a) if the unexpired term of the bonds to be refunded is greater than 10 years, the refunding bonds may be issued for the unexpired term; or

(b) if the 10-year term requires an annual tax levy for payment of the refunding bonds which exceeds 10 mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to 10 mills.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(1), (2).

7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided hereafter and in 7-7-2203 and 7-7-2204, no county shall issue bonds which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 9% of the taxable value of the property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants except county high school bonds, will exceed 9% but will not exceed 18% of the taxable value of such property when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, shall not exceed 18% of the taxable value of the property within the county as ascertained by the last preceding general assessment.

History: (1), (2), (4)En. Sec. 7-304, Ch. 197, L. 1965; amd. Sec. 15, Ch. 100, L. 1973; amd. Sec. 13, Ch. 391, L. 1973; Sec. 32-3804, R.C.M. 1947; (3)En. Sec. 7-301, Ch. 197, L. 1965; Sec. 32-3801,

R.C.M. 1947; R.C.M. 1947, 32-3801(2), 32-3804(part); amd. Sec. 2, Ch. 332, L. 1979; amd. Sec. 4, Ch. 617, L. 1979.

Compiler's Comments

Effective date. Sec. 3, Ch. 332, L. 1979, provided: "This act is effective on passage and approval." Approved March 27, 1979.

7-14-2525. Refunding agreements and refunding bonds authorized. (1) Whenever the total indebtedness of a county exceeds 18% of the taxable value of the property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof;

(b) enter into such agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 7-302, Ch. 197, L. 1965; amd. Sec. 14, Ch. 100, L. 1973; R.C.M. 1947, 32-3802; amd. Sec. 5, Ch. 617, L. 1979.

7-14-2526. Choice of form of bonds. All bonds issued by any county shall be either amortization bonds or serial bonds. Amortization bonds shall be issued in preference to serial bonds.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(1).

7-14-2527. Amortization bonds. (1) The term "amortization bonds" means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable.

(2) The part payment of principal increases with each following installment in the same amount the interest payment decreases so that the combined amount payable on principal and interest is the same on each interest payment date.

(3) However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(2).

7-14-2528. Serial bonds. (1) The term "serial bonds" means a bond issue payable in equal annual installments, one installment consisting of one or more bonds becoming due and payable each year.

(2) The amount to be paid and redeemed each year shall be determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run so that the total amount of principal to be paid each year will be the same.

(3) The amount of installments becoming due and payable the first year or the first and second years may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at $100, $500, or $1,000, as may be determined by the board.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(3).

7-14-2529. Payment of interest. Interest shall be payable semiannually.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(4).

7-14-2530. Redemption of bonds authorized. (1) All bonds issued for a term longer than 5 years shall be redeemable, at the option of the county, 5 years after the date of issue and on any payment due date thereafter before maturity.

(2) This statement shall appear on the face of each bond.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(3).

7-14-2531. Definition of term single purpose. (1) It shall be deemed a single purpose to:

(a) acquire a right-of-way for and construct a public highway, including any bridge or bridges thereon;

(b) contribute to the cost of a federal-aid bridge;

(c) contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

(3) Nothing contained in this section shall be construed as amending or repealing 7-16-2201 through 7-16-2205.

History: En. Sec. 7-303, Ch. 197, L. 1965; R.C.M. 1947, 32-3803.

Part 26

Establishment, Alteration, and Abandonment of County Roads

7-14-2601. Petition to establish, alter, or abandon a county road. (1) Any 10, or a majority, of the freeholders of a road district taxable therein for road purposes may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district.

(2) When the road petitioned for is on the dividing line between two counties, the same procedure must be followed except that a copy of the petition must be presented to each board. The two boards shall act jointly.

(3) As used in this part, unless the context requires otherwise:

(a) "board" means the board of county commissioners;

(b) "abandonment" means cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again and is sometimes called "vacation".

History: (1), (2)En. Sec. 8-202, Ch. 197, L. 1965; Sec. 32-4002, R.C.M. 1947; (3)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-4002(part).

7-14-2602. Contents of petition. The petition must set forth:

(1) the particular road or roads to be opened, established, constructed, changed, abandoned, or discontinued;

(2) the general route thereof;
(3) the lands and owners affected;
(4) whether the owners who can be found consent thereto;
(5) where consent is not given, the probable cost of the right-of-way;
(6) the necessity for and advantage of the petitioned action.

History: En. Sec. 8-203, Ch. 197, L. 1965; R.C.M. 1947, 32-4003.

7-14-2603. Investigation of request concerning road — decision. (1) At its next regular or special meeting or in any case at a date within 30 days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation.

(3) After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

History: En. Sec. 8-204, Ch. 197, L. 1965; R.C.M. 1947, 32-4004(1), (2).

7-14-2604. Notice of decision on petition. Within 10 days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

History: En. Sec. 8-204, Ch. 197, L. 1965; R.C.M. 1947, 32-4004(3).

7-14-2605. Opening of county road. If the petition is for the opening of a county road and the board grants the prayer ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road.

History: En. Sec. 8-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4005(part).

7-14-2606. Survey of road. (1) The board may order the county surveyor, or some other competent surveyor if the county surveyor is incompetent, to survey and plat the road. He shall file his field notes with the county clerk and recorder.

(2) The surveyor shall receive $7 per day and actual traveling expenses.

History: En. Sec. 8-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4005(part).

7-14-2607. Damages resulting from establishment or alteration of road. (1) Whenever the board makes an order establishing or changing any road, it must find the amount of damages sustained by each owner or claimant of lands or improvements thereon affected by the road. Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

(2) Damages shall be paid to the owner or claimant, if known, upon his showing or establishing his right or title to the lands or improvements and furnishing proper deeds and releases.

History: En. Sec. 8-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4006(1), (2).

7-14-2608. Effect of acceptance or rejection of award of damages. (1) If all awards are accepted, the board shall declare the road a county road and open it.

(2) (a) If any award of damages provided for in 7-14-2607 is not accepted within 20 days after the date of the award, it shall be deemed rejected by the owner.

(b) The board shall by order direct that proceedings to procure the right-of-way be instituted under Title 70, chapter 30 by the county attorney against all nonaccepting landowners.

(c) In such proceedings it shall be made to appear that the board shall have declared by resolution that the right-of-way was necessary and desirable.

History: (1)En. Sec. 8-206, Ch. 197, L. 1965; Sec. 32-4006, R.C.M. 1947; (2)En. Sec. 8-207, Ch. 197, L. 1965; Sec. 32-4007, R.C.M. 1947; R.C.M. 1947, 32-4006(3), 32-4007(1), (3).

7-14-2609. Effect of failure to give notice. The proceedings provided for in 7-14-2608 shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for in this part. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right-of-way.

History: En. Sec. 8-207, Ch. 197, L. 1965; R.C.M. 1947, 32-4007(2).

7-14-2610. Payment of damages and expenses. All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by 7-4-2107 and 7-4-2108, shall be paid out of the county road fund on the order of the board.

History: En. Sec. 8-208, Ch. 197, L. 1965; R.C.M. 1947, 32-4008.

7-14-2611. Alteration of road to follow subdivision or section lines. (1) A majority of the freeholders or owners residing on any county road or portion thereof may petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in 7-14-2603. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: En. Sec. 8-209, Ch. 197, L. 1965; R.C.M. 1947, 32-4009.

7-14-2612. Crossing of railroad, canal, or ditch by county road — costs. (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-213, Ch. 197, L. 1965; R.C.M. 1947, 32-4013.

7-14-2613. Notice to district supervisor of opening or alteration of county road. When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board.

History: En. Sec. 8-210, Ch. 197, L. 1965; R.C.M. 1947, 32-4010.

7-14-2614. Record of road opening or alteration to be maintained. When a county road is opened or changed, the findings of the board, the plat field notes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: En. Sec. 8-211, Ch. 197, L. 1965; R.C.M. 1947, 32-4011.

7-14-2615. Abandonment or vacation of county roads. (1) All county roads once established must continue to be county roads until abandoned or vacated by:

(a) operation of law;

(b) judgment of a court of competent jurisdiction; or

(c) the order of the board.

(2) No order to abandon any county road shall be valid unless preceded by notice and public hearing.

History: En. Sec. 8-214, Ch. 197, L. 1965; R.C.M. 1947, 32-4014.

7-14-2616. Procedure to discontinue street. (1) The county commissioners may discontinue a street or alley or any part thereof in an unincorporated town or townsite upon the petition in writing of all owners of lots on the street or alley if it can be done without detriment to the public interest.

(2) Where the street or alley is to be closed for school purposes, a petition signed by 75% of the lot owners on the whole street or alley to be closed will be required.

(3) Before acting upon such petition, a notice must be published or posted in three public places, stating when such petition will be acted on and what street or alley or part thereof is asked to be vacated. Such notice must be published in a newspaper or posted at least 1 week before the petition is acted on.

History: (1), (2)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; Sec. 11-2801, R.C.M. 1947; (3)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R.C.M. 1921; re-en. Sec. 5307, R.C.M. 1935; Sec. 11-2802, R.C.M. 1947; R.C.M. 1947, 11-2801(part), 11-2802.

7-14-2617. Discontinuance of street not to affect utility easements. The vacation authorized by 7-14-2616 shall not affect the right of any public utility to continue to maintain its plant and equipment in any such street or alley.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; R.C.M. 1947, 11-2801(part).

7-14-2618 through 7-14-2620 reserved.

7-14-2621. Establishment and alteration of stock lanes. (1) A stock lane is a county road established and maintained for the driving and travel of livestock. It shall be not less than 60 feet wide. The width shall be determined by the board in the order creating it.

(2) Upon presentation of a proper petition, each board may establish, alter, or vacate stock lanes when it deems it expedient and necessary for the convenience of the public and for the convenience of travel on roads now established. Any lane may adjoin and parallel a county road and shall be described in the petition for creation and in the order of the board creating it.

(3) The provisions of this part and the general laws relating to establishing, altering, and vacating county roads, including the exercise of the right of eminent domain, shall apply to stock lanes. References in all petitions, orders, and proceedings shall be to stock lanes in order to differentiate them from other highways.

History: En. Sec. 8-215, Ch. 197, L. 1965; R.C.M. 1947, 32-4015.

Part 27

Local Improvement Districts

7-14-2701. Development of county roads. (1) Upon proper petition, as provided for in 7-14-2702, the board shall cause county roads to be laid out, opened, constructed, and improved.

(2) As used in this part, unless the context requires otherwise, "board" means the board of county commissioners.

History: (1)En. Sec. 5-401, Ch. 197, L. 1965; Sec. 32-3101, R.C.M. 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-3101(1).

7-14-2702. Petition for opening or improving road. (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds of the lineal feet of land fronting on the proposed or existing road or by two-thirds of the residents of the proposed district. If any land is in the name of a deceased person or a person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian is equivalent to the signature of the owner.

(2) The petition must set forth:

(a) that the petitioners are qualified to sign the petition and that they desire the petitioned action;

(b) the kind and nature of the improvement desired;

(c) the mode of payment of the assessments to be levied for defraying the cost thereof, whether immediate payment or by payment in installments;

(d) the portion of the costs which the district, if formed, will assume and pay.

History: En. Secs. 5-402, 5-418, Ch. 197, L. 1965; R.C.M. 1947, 32-3102(part), 32-3118(part); amd. Sec. 4, Ch. 253, L. 1979.

7-14-2703. Proportion of costs to be borne by local improvement district. The portion of the costs which the district will assume and pay must not be less than 35% of the costs and may be as much as 75% thereof.

History: En. Sec. 5-402, Ch. 197, L. 1965; R.C.M. 1947, 32-3102(part).

7-14-2704. Resolution of public interest. (1) Upon receipt of the petition, the board shall pass a resolution that the public interest demands the laying out, opening, constructing, or improving of the road or part thereof described in the resolution.

(2) The description shall not include any portion of any road within the boundaries of any city or incorporated town.

History: En. Sec. 5-403, Ch. 197, L. 1965; R.C.M. 1947, 32-3103.

7-14-2705. Meeting between county road superintendent, residents, and owners of land. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy, all owners upon whose lands special assessments will be levied, and all residents within the proposed district.

(2) All owners of land fronting on the road or land within 2 miles on either side of it upon which special assessments will be levied and all residents within the proposed district may meet with the superintendent or his duly appointed deputy.

History: En. Secs. 5-404, 5-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3104(1), 32-3105(1); amd. Sec. 5, Ch. 253, L. 1979.

7-14-2706. Notice of meeting. (1) The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be printed in the newspaper published nearest to the vicinity of the road. The notice shall be published for 3 consecutive weeks prior to the time of the meeting.

(2) The notice shall state the time and place of the meeting and in general terms the kind of construction or improvement sought and the place of beginning, intermediate points, and termination.

History: En. Sec. 5-404, Ch. 197, L. 1965; R.C.M. 1947, 32-3104(2), (3).

7-14-2707. Meeting procedure — election of committee of supervisors. (1) The superintendent or his deputy, or in their absence one of the landowners or residents present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(2) A majority of the owners and residents present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local improvement district or residents within the proposed district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors. The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law.

History: En. Sec. 5-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3105(2) thru (4); amd. Sec. 6, Ch. 253, L. 1979.

7-14-2708. Investigation of proposed road — obtaining releases for damages. The committee and the surveyor or his deputy shall:

(1) immediately view, examine, and survey the road petitioned for;

(2) examine and determine the lands which will be specially benefited by the road and which should be included within the district that is to be assessed;

(3) ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road; and

(a) obtain, if possible without cost, the release in writing of each person of his claim for such damage or injury; or

(b) arrange, when necessary, for a release to be given for such amount as may be fair and reasonable.

History: En. Sec. 5-406, Ch. 197, L. 1965; R.C.M. 1947, 32-3106(1).

7-14-2709. Preparation and presentation of plans, estimates, and report. (1) The road superintendent shall without delay prepare plans and specifications and cost estimates. He shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands shall be that which appears on the last annual assessment roll of the county for the levying of general taxes.

(2) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report. The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

History: (1)En. Sec. 5-406, Ch. 197, L. 1965; Sec. 32-3106, R.C.M. 1947; (2)En. Sec. 5-407, Ch. 197, L. 1965; amd. Sec. 41, Ch. 566, L. 1977; Sec. 32-3107, R.C.M. 1947; R.C.M. 1947, 32-3106(2), 32-3107(1).

7-14-2710. Creation of local improvement district. (1) If the whole amount of damages, costs, and expenses shall not exceed 135% of the total taxable value of the parcels of land in the district as determined from the last annual assessment roll of the county, the board shall make and enter upon the report an order that the road be made.

(2) That order shall create the local improvement district, to be known and designated as "local improvement district No. .... in ..... County, Montana".

(3) Copies of the report shall be kept in the offices of the board and road superintendent.

History: En. Sec. 5-407, Ch. 197, L. 1965; amd. Sec. 41, Ch. 566, L. 1977; R.C.M. 1947, 32-3107(2), (3).

7-14-2711. Division of local improvement district into parts. (1) The boundaries of assessment districts within a local improvement district are as follows:

(a) The lands extending from the center of the road one-half mile on each side thereof (measuring 1 mile in width) constitute Part One of the district.

(b) The lands embraced within an area 1 mile wide on each side of Part One constitute Part Two of the district.

(c) The lands embraced within an area 1 mile wide on either side of Part Two constitute Part Three of the district.

(2) Each of the parts extends the full length of the proposed road and 1 mile beyond the terminus unless the committee otherwise provides.

History: En. Sec. 5-410, Ch. 197, L. 1965; R.C.M. 1947, 32-3110; amd. Sec. 7, Ch. 253, L. 1979.

7-14-2712. Inspector of works — compensation. (1) The committee and road superintendent together shall appoint some suitable and competent person other than they to act as an inspector of the work. He shall be upon the work at all times during its progress and inspect the performance thereof. He shall report to and be under the supervision of the superintendent.

(2) He shall be paid for his services as inspector at the rate of $5 per day for the time he is actually engaged thereon.

History: En. Sec. 5-413, Ch. 197, L. 1965; R.C.M. 1947, 32-3113(1), (2).

7-14-2713. Compensation of committee of supervisors. Each supervisor shall be paid the sum of $3 per day for the time the committee is actually engaged in meeting and acting with the superintendent and in transacting the business of the district. No mileage or other expense money shall be paid.

History: En. Sec. 5-413, Ch. 197, L. 1965; R.C.M. 1947, 32-3113(3).

7-14-2714. County authorized to carry out construction or improvement project. (1) Roads in districts may be constructed and improved in the first instance at the entire expense of the county, and the county may, as far as practicable, take the place of a private contractor.

(2) If bids for construction and improvement are rejected by the committee, the district may contract with the board to construct or improve the road.

(3) When the county has paid for construction and improvements, it shall be recompensed by the district in accordance with their agreement. If bonds were issued under the installment plan, they shall become the property of the county.

(4) The county shall have the same lien as if the contract had been let to a private contractor.

History: En. Sec. 5-414, Ch. 197, L. 1965; R.C.M. 1947, 32-3114.

7-14-2715. Work contracts with local improvement districts. (1) After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall advertise for bids. The advertisement shall state generally the work to be done and shall refer to the plans and specifications. It shall also fix the time for opening bids in the office of the board. Each bidder shall meet the requirements of Title 18, chapter 1, part 2.

(2) At that time, the committee shall open all bids. It may reject all of them and readvertise for bids. No contract shall be awarded at a greater sum than the estimate of cost provided for in this part.

History: En. Sec. 9-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4205.

7-14-2716. Award of contract by local improvement district. (1) If the committee awards a contract, it shall do so in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee.

History: En. Sec. 9-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4206(1), (3).

7-14-2717. Performance bond to be given by successful bidder. Before entering upon performance of the contract, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the committee, a contract shall not be completed until the committee, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4206(2).

7-14-2718. Local improvement district contracts to be executed by board of county commissioners. The contract shall be executed in the name and on behalf of the county by the board and attested with the county seal for the use and benefit of the local improvement district. The county shall not be subject to any claim or liability in an amount greater than that agreed upon with the district in the order fixing the amount chargeable to the county.

History: En. Sec. 9-207, Ch. 197, L. 1965; R.C.M. 1947, 32-4207.

7-14-2719. Procedure for payment of claims. (1) The committee shall approve and certify all claims and accounts for services and every kind of expense payable from funds of the district.

(2) The county auditor, or the county clerk in any county which has no auditor, shall then audit all such claims and accounts. Thereafter he shall issue to the treasurer an order in favor of the person to whom the claim or account is payable to pay it.

(3) Upon presentation of the order by the person to whom it was issued or his assignee, the treasurer shall pay it from the funds of the district.

History: En. Sec. 5-429, Ch. 197, L. 1965; R.C.M. 1947, 32-3129.

7-14-2720. Payments while work in progress. (1) The surveyor with the approval of the committee, shall make estimates of the proportion of the work completed. After auditing, the estimates may be paid by the treasurer, to an amount not exceeding 80%, during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order only from such assessments as shall have been collected prior to the issue of the bonds and from the proceeds of the sales of the bonds after issue.

(3) If the board has ordered that the contractor shall receive bonds in payment, the order for payment shall call for bonds instead of money. The treasurer shall deliver the bonds, dating them the day he delivers them to the contractor, and interest shall run therefrom.

History: En. Sec. 5-430, Ch. 197, L. 1965; R.C.M. 1947, 32-3130(1) thru (3).

7-14-2721. Disposition of excess funds after full payment for road. (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury which belongs to the district shall be refunded on demand. A rebate therefrom shall be made on demand to any person who shall not have paid his assessment in full.

(2) Demand shall be made within 2 years from the date upon which the assessment became due.

(3) Any such money remaining in the county treasury after the expiration of 2 years for which no demand has been made, shall go into the general fund.

History: **En. Sec. 5-431, Ch. 197, L. 1965; R.C.M. 1947, 32-3131.**

7-14-2722 through 7-14-2730 reserved.

7-14-2731. Assessment and lien upon lands benefited by road. (1) The board shall levy and cause to be collected an assessment upon all parcels of land specifically benefited by the laying out, opening, construction, or improvement, for paying the costs thereof.

(2) The assessment shall be a first lien upon the liable land, prior and superior to all other liens and encumbrances.

History: **En. Sec. 5-401, Ch. 197, L. 1965; R.C.M. 1947, 32-3101(2), (3).**

7-14-2732. Payment of assessments — bond issue. (1) The board shall provide for the payment of assessments either on the immediate payment plan or by installments.

(2) The board shall issue local improvement district bonds and coupons for each installment.

History: **En. Sec. 5-401, Ch. 197, L. 1965; R.C.M. 1947, 32-3101(4), (5).**

7-14-2733. Sharing of road costs with county. (1) The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made specifying the amount to be paid by the district and the amount to be paid from county funds, the board shall make an order to that effect on the records of its proceedings.

(2) The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed 65% of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants, duly drawn, as ordered by the board.

History: **(1)En. Sec. 5-408, Ch. 197, L. 1965; Sec. 32-3108, R.C.M. 1947; (2)En. Sec. 5-409, Ch. 197, L. 1965; Sec. 32-3109, R.C.M. 1947; R.C.M. 1947, 32-3108, 32-3109.**

7-14-2734. Assessments to be allocated between parts of district. (1) Each separate parcel of land in Part One shall be assessed for its proportion of 45% of the whole cost payable by the district.

(2) Each separate parcel of land in Part Two shall be assessed for its proportion of 35% of the cost.

(3) Each separate parcel of land in Part Three shall be assessed for its proportion of 20% of the cost.

History: **En. Sec. 5-411, Ch. 197, L. 1965; R.C.M. 1947, 32-3111(1) thru (3).**

7-14-2735. Lien arising from assessments. (1) All of the lands in each part shall be subject to a lien for all of the assessments of that part until they have been paid.

(2) The assessment so made shall be a first lien on the land described in the assessment roll.

History: (1)En. Sec. 5-411, Ch. 197, L. 1965; Sec. 32-3111, R.C.M. 1947; (2)En. Sec. 5-417, Ch. 197, L. 1954; Sec. 32-3117, R.C.M. 1947; R.C.M. 1947, 32-3111(4), 32-3117(3).

7-14-2736. Determination of assessment. The assessments upon the parcels of land in each part shall be made ratably according to the front-foot plan as follows:

(1) The unit used to determine the proportion of assessment shall be 1 foot of longitude measured along the road constituting the center of the district and extending latitudinally across the part.

(2) Because units in each part may not be equal, assessment rates for each part shall be determined for 880 square feet of surface.

History: En. Sec. 5-412, Ch. 197, L. 1965; R.C.M. 1947, 32-3112(1).

7-14-2737. Adjustment of assessment rates due to unequal areas in parts. If the areas of the parts are not equal, the rates fixed for parts one, two, and three shall be related to each other as are the numbers 45, 35, and 20, respectively.

History: En. Sec. 5-412, Ch. 197, L. 1965; R.C.M. 1947, 32-3112(2).

7-14-2738. Preparation of assessment roll. (1) When the order for improvement and construction has been made by the board, the committee and the county assessor shall apportion the estimated cost and expenses to the land in the district.

(2) Within 30 days before the letting of the contract, the assessor shall report to and file with the board and the treasurer an assessment roll in duplicate. It shall contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known.

History: En. Sec. 5-415, Ch. 197, L. 1965; R.C.M. 1947, 32-3115(part).

7-14-2739. Notice of preparation of assessment roll. As soon as the assessment roll is reported and filed, the board shall publish notice for 3 consecutive weeks in the newspapers in which notice of invitations for bids for the contract was published. The notice shall notify all persons interested that the assessment roll has been filed and require them to appear at the office of the board at the county seat at a time not less than 15 days from the date of the last publication of the notice to make objections.

History: En. Sec. 5-416, Ch. 197, L. 1965; R.C.M. 1947, 32-3116(1).

7-14-2740. Hearing on assessment roll. At the time fixed, the board and the assessor shall meet. If no objections have been filed, the board shall make an order confirming the assessment roll. If written objections, properly verified, have been filed, the board shall hear the objections, receiving any testimony from any party involved.

History: En. Sec. 5-416, Ch. 197, L. 1965; R.C.M. 1947, 32-3116(2).

7-14-2741. Effect of error in name of owner. In no case shall a mistake in the name of the owner be fatal to the assessment when the description of the land is correct.

History: En. Sec. 5-415, Ch. 197, L. 1965; R.C.M. 1947, 32-3115(part).

7-14-2742. Correction of errors — approval of assessment roll. (1) After the hearing, the board shall make such corrections as appear just to apportion the assessment to the benefit to be received.

(2) It shall then make and enter an order approving and certifying the assessment roll.

History: En. Sec. 5-417, Ch. 197, L. 1954; R.C.M. 1947, 32-3117(1).

7-14-2743. Levy of assessments. With the aid of the assessor, the board shall levy and assess the amounts on the assessment roll against the parcels of land or parts thereof.

History: En. Sec. 5-417, Ch. 197, L. 1954; R.C.M. 1947, 32-3117(2).

7-14-2744. Mode of payment of assessment — immediate payment. (1) If immediate payment is chosen, the board shall deliver the assessment roll to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in his office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for 2 consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(3) Failure to mail notice shall not be fatal to the assessment when it has been published.

(4) The notice shall state the following:

(a) The assessment roll has been certified to the treasurer for collection.

(b) Unless payment is made within 30 days from the date of the notice, the payment will become delinquent and shall bear interest at the rate of 10% per annum.

(c) If the assessment is not paid before it becomes delinquent, a penalty of 5% shall be added, as well as the interest on the annual tax roll for the current year.

(d) The interest and penalty shall be collected together with such additional charges as are authorized to be charged and collected on other delinquent taxes.

(e) The land assessed shall be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

History: (1) thru (3)En. Sec. 5-419, Ch. 197, L. 1965; Sec. 32-3119, R.C.M. 1947; (4)En. Sec. 5-420, Ch. 197, L. 1965; Sec. 32-3120, R.C.M. 1947; R.C.M. 1947, 32-3119, 32-3120.

7-14-2745. Mode of payment of assessment — installment payments. (1) Installment payments shall be made in six equal portions, in 1, 2, 3, 4, 5, and 6 years.

(2) Payments shall be in the form of bonds which shall draw 6% interest per annum from the date they are issued until they are paid.

(3) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(4) The board and the assessor shall, at the time of levying the assessment and in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with

interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(5) Each year thereafter, the treasurer shall collect one of the installments, together with the interest due thereon and the interest due on the installments thereafter to become due.

(6) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments.

History: (1), (2)En. Sec. 5-418, Ch. 197, L. 1965; Sec. 32-3118, R.C.M. 1947; (3) thru (6)En. Sec. 5-421, Ch. 197, L. 1965; amd. Sec. 27, Ch. 234, L. 1971; Sec. 32-3121, R.C.M. 1947; R.C.M. 1947, 32-3118(part), 32-3121.

7-14-2746. Disposition of amounts collected on installment payments of assessments. Amounts collected on installment payments of assessments shall be reserved and disbursed by the treasurer for the payment of principal and interest and for the redemption of the bonds referred to in 7-14-2720.

History: En. Sec. 5-430, Ch. 197, L. 1965; R.C.M. 1947, 32-3130(4).

7-14-2747 through 7-14-2750 reserved.

7-14-2751. Use of bonds to make payment of costs. When improvement is ordered upon a petition specifying the method of payment of bonds, the board shall provide that the payment of costs and expenses be made under the provisions of this part by bonds charged against the lands in the district. The bonds may be issued to the contractors in payment, or costs may be paid by the proceeds of the bonds to be issued and sold as hereinafter provided. In all other cases, the board may so provide.

History: En. Sec. 5-422, Ch. 197, L. 1965; R.C.M. 1947, 32-3122.

7-14-2752. Order for issuance of bonds. The board shall make and enter an order authorizing and directing the issuance of bonds payable not more than 10 years after the date of issuance.

History: En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; R.C.M. 1947, 32-3123(1).

7-14-2753. Details relating to bonds. (1) Each bond shall provide that the holder shall not demand payment until it comes due. It shall bear interest payable annually and shall have interest coupons for each interest payment attached.

(2) Each bond and coupon shall bear the date of issuance and be made payable to bearer. Each bond shall be signed by the chairman of the board and attested by the county clerk. The seal of the board shall be affixed to each bond.

(3) Bonds shall be issued in denominations of not less than $100 or more than $1,000.

(4) Each bond shall contain a reference to the district for which it is issued and to the order and record authorizing the issue. It shall state that it is payable only out of the local improvement funds created by special assessment and not otherwise.

(5) On its face, each bond shall bear the designation of the district: "local improvement district No. .... in .... County, Montana".

(6) The board may also direct in the order providing for issuance of the bonds that they be sold by the treasurer at not less than par value and accrued interest.

History: (1) thru (5)En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; Sec. 32-3123, R.C.M. 1947; (6)En. Sec. 5-426, Ch. 197, L. 1965; Sec. 32-3126, R.C.M. 1947; R.C.M. 1947, 32-3123(2) thru (6), 32-3126(part).

7-14-2754. Limit on amount of bond issue. No bond shall be issued in excess of the costs and expenses of the improvements and construction.

History: En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; R.C.M. 1947, 32-3123(7).

7-14-2755. Notice of use of bonds. (1) If the board provides that payment of costs shall be made by the issuance of bonds, the treasurer shall publish notice for 2 consecutive weeks and mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice shall state that:

(a) the assessment roll has been certified to the treasurer for collection;

(b) unless payment of the whole amount of the assessment is made within 30 days from the date of the notice, special bonds shall be issued against the lands in the district for the payment of the assessment;

(c) if the bonds are issued, they will be payable in annual installments with interest thereon at the rate provided in the bonds.

History: En. Sec. 5-424, Ch. 197, L. 1965; R.C.M. 1947, 32-3124.

7-14-2756. Payment of assessment — release from bond obligations. (1) At any time within 30 days after notice, the owner may pay the assessment and release and discharge his lands therefrom and from the operation and effect of the bonds.

(2) No bonds shall be issued until 20 days after the expiration of 30 days after notice. No bonds shall be issued for any assessment paid in full within the 30 days.

History: En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(1), (2).

7-14-2757. Redemption of land. The owner of lands may redeem them from all liability for assessment at any time after the 30 days by paying all of the assessment remaining unpaid, together with interest and all charges thereon to the date of maturity of the installment next falling due.

History: En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(3).

7-14-2758. Payments to be made to treasurer. All payments under the provisions of 7-14-2756 or 7-14-2757 shall be made to the treasurer, who shall apply them solely to the costs of the improvement or construction.

History: En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(4).

7-14-2759. Issuance of bonds to contractor. Bonds ordered sold by the board may be issued to the contractor constructing the improvement in payment.

History: En. Sec. 5-426, Ch. 197, L. 1965; R.C.M. 1947, 32-3126(part).

7-14-2760. Payment of interest. The treasurer shall pay the interest on the bonds out of the funds of the district collected on assessments for the bonds.

History: En. Sec. 5-427, Ch. 197, L. 1965; R.C.M. 1947, 32-3127(1).

7-14-2761. Rights of bondholders. (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed in his own name to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest thereon, any such owner shall recover 5% of the costs of his suit.

(2) Any number of holders of bonds for any single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor any owner of any bond shall have any claim against the county through which the bond is issued except for the assessments. His remedy in case of nonpayment shall be confined to the enforcement of the assessments.

(4) A copy of this section shall be plainly written, printed, or engraved on each bond.

History: En. Sec. 5-428, Ch. 197, L. 1965; R.C.M. 1947, 32-3128.

7-14-2762. Disposition of bond proceeds. The proceeds of such bonds shall be applied in payment of the costs and expenses of the improvement.

History: En. Sec. 5-426, Ch. 197, L. 1965; R.C.M. 1947, 32-3126(part).

7-14-2763. Retirement of outstanding bonds. (1) Whenever there is money in the fund against which the bonds have been issued over and above the amount sufficient for the payment of interest on all unpaid bonds, it shall be used to pay the principal on one or more of the bonds. The treasurer shall call in and pay the bonds in their numerical order.

(2) The call shall be published in the official county newspaper on the day following the maturity date of the installment of assessment or as soon thereafter as practicable. It shall state that special bonds No. .... (giving the serial number or numbers of the bonds called) of the district will be paid on the day the next interest coupons become due. Interest upon the bonds thus called shall cease upon that date.

History: En. Sec. 5-427, Ch. 197, L. 1965; R.C.M. 1947, 32-3127(2), (3).

Part 28

Ferries and Wharves

7-14-2801. General powers of county relating to ferries. The board of county commissioners, under such limitations and restrictions as are prescribed by law, may:

(1) lay out, maintain, control, and manage county ferries within the county and levy taxes therefor as provided by law;

(2) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county ferries in adjacent counties,

wholly or in such part as may be agreed upon between the boards of the counties concerned, and levy taxes therefor as provided by law.

History: En. Subd. 4, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.3, R.C.M. 1935; amd. Sec. 12-101, Ch. 197, L. 1965; R.C.M. 1947, 16-1004(part).

7-14-2802. Construction and operation of ferries uniting two counties. (1) When a public ferry, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ferrymen are employed on joint ferries, they shall report quarterly to each board, giving such information as each board may require.

History: En. Sec. 5-207, Ch. 197, L. 1965; R.C.M. 1947, 32-2907.

7-14-2803. Establishment and operation of public ferry or wharf upon petition. When it shall be made to appear by petition to any board of county commissioners in this state that it is necessary to keep and maintain a public ferry across or a wharf at any unfordable stream, lake, estuary, or bay, any county within the state, through its board of county commissioners, is hereby authorized to construct or to acquire by condemnation or purchase and to operate, maintain, direct, regulate, and control the operation of a ferry across or a wharf at any unfordable stream, lake, estuary, or bay within or bordering on said county, together with all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll.

History: En. Sec. 1, Ch. 33, L. 1909; re-en. Sec. 4477, R.C.M. 1921; re-en. Sec. 4477, R.C.M. 1935; R.C.M. 1947, 16-1116.

7-14-2804. Acquisition of property for public ferries and wharves. (1) Upon the proper showing as provided in 7-14-2803, each board of county commissioners may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of Title 70, chapter 30.

(3) No board shall establish or maintain a county ferry or wharf with a landing place in any incorporated city or town which by its charter is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965; R.C.M. 1947, 32-4017.

7-14-2805. Establishment and operation of public ferry or wharf by county upon its own motion. (1) Any county of the state may own and establish and the board of county commissioners of any county of the state may operate and manage free or toll ferries and wharves for the use of the public and may employ one or more ferrymen to operate such free or toll ferries and wharves.

(2) While such ferries or wharves are so owned by any county and operated and managed by such board, such operation shall be and is hereby expressly declared to be a governmental function.

(3) The board may also lease any ferries or wharves owned by such county to a company, firm, or individual to be operated for the use of the public. Said company, firm, or individual shall give bond, in an amount deemed sufficient by the board, conditioned for the careful and business-like operation of such ferry or wharf in accordance with law and the regulations of said board. While such ferry or wharf is so operated by a lessee of said county, such operation is expressly declared to be the private function of such lessee.

History: En. Sec. 4, Ch. 33, L. 1909; re-en. Sec. 4480, R.C.M. 1921; re-en. Sec. 4480, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1943; R.C.M. 1947, 16-1119.

7-14-2806. Rules and rates for public ferry or wharf. (1) The board of county commissioners shall make all needful rules for the government and operation of county ferries, alter and fix rates of toll, and fix the amount of rental when leased to individuals or companies.

(2) In all cases the rate of toll shall be printed in legible form and posted upon the boat and at the landing places.

History: En. Sec. 5, Ch. 33, L. 1909; re-en. Sec. 4481, R.C.M. 1921; re-en. Sec. 4481, R.C.M. 1935; R.C.M. 1947, 16-1120.

7-14-2807. Tax levy for public ferry. The board of county commissioners may levy a special tax, not to exceed 2 mills on the dollar, on the taxable property of the county for the purpose of constructing, maintaining, and repairing public ferries.

History: En. Sec. 1, Ch. 53, L. 1959; R.C.M. 1947, 32-1518.

7-14-2808 through 7-14-2820 reserved.

7-14-2821. Permission to operate ferry between counties. (1) When authority to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of commissioners of the county situated on the left bank descending the river, creek, or slough.

(2) The board may not grant authority to erect a toll ferry until the notice of the intended application is given as required in 7-14-2822.

(3) After notice is given, an application must be made in writing, under oath, to the board of the proper county. The applications must contain a description of the proposed ferry landings; the names of the owners, if known, of the proposed landings; and a statement that notice of the application has been served at least 10 days prior to the date of application on those landowners who are not parties to the application.

History: (1)En. Sec. 2820, Pol. C. 1895; re-en Sec. 1457, Rev. C. 1907; re-en. Sec. 1766, R.C.M. 1921; Cal. Pol. C. Sec. 2843; re-en. Sec. 1766, R.C.M. 1935; Sec. 32-1501, R.C.M. 1947; (2)En. Sec. 2821, Pol. C. 1895; re-en. Sec. 1458, Rev. C. 1907; re-en. Sec. 1767, R.C.M. 1921; Cal. Pol. C. Sec. 2844; re-en. Sec. 1767, R.C.M. 1935; amd. Sec. 39, Ch. 136, L. 1974; Sec. 32-1502, R.C.M. 1947; (3)En. Sec. 2822, Pol. C. 1895; re-en. Sec. 1459, Rev. C. 1907; re-en. Sec. 1768, R.C.M. 1921; Cal. Pol. C. Sec. 2892; re-en. Sec. 1768, R.C.M. 1935; Sec. 32-1503, R.C.M. 1947; R.C.M. 1947, 32-1501, 32-1502, 32-1503(part); amd. Sec. 8, Ch. 253, L. 1979.

7-14-2822. Notice of application to operate ferry. Every applicant for authority to erect and take tolls on a public ferry must publish notice, specifying the location and the time when and place where the application will be made:

(1) in at least one newspaper in each county in which the ferry is or touches or, if there is no newspaper published therein, then in one published in an adjoining county; and

(2) by posting three notices in three public places in the township for 4 successive weeks.

History: En. Sec. 2822, Pol. C. 1895; re-en. Sec. 1459, Rev. C. 1907; re-en. Sec. 1768, R.C.M. 1921; Cal. Pol. C. Sec. 2892; re-en. Sec. 1768, R.C.M. 1935; R.C.M. 1947, 32-1503(part).

7-14-2823. Hearing and decision on application. (1) At the hearing, proof of giving the notice required by 7-14-2821 and 7-14-2822 must be made, and any person may appear and contest the application. If the board of commissioners finds that the ferry is either a public necessity or convenience and that the applicant is a suitable person and, by reason of the ownership of the landing or failure of the owner thereof to apply, is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of 10 years. The board may at any time they see fit authorize and maintain fords across any water within any distance of any ferry.

(2) The board granting authority to keep a public ferry must at the same time:

(a) fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county and all persons crossing or desiring to cross the same and provide for the annual renewal thereof;

(b) fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than $3 or over $100 per month, payable annually;

(c) fix the rate of tolls which may be collected for crossing the ferry;

(d) make all necessary orders relative to the construction, erection, and business of ferries which they have by law the power to make.

(3) When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, he must not act in any such matters.

History: Ap. p. Sec. 2823, Pol. C. 1895; re-en. Sec. 1460, Rev. C. 1907; re-en. Sec. 1769, R.C.M. 1921; Cal. Pol. C. Sec. 2893; re-en. Sec. 1769, R.C.M. 1935; Sec. 32-1504, R.C.M. 1947; Ap. p. Sec. 2824, Pol. C. 1895; re-en. Sec. 1461, Rev. C. 1907; re-en. Sec. 1770, R.C.M. 1921; Cal. Pol. C. Sec. 2845; re-en. Sec. 1770, R.C.M. 1935; Sec. 32-1505, R.C.M. 1947; (3)En. Sec. 2831, Pol. C. 1895; re-en. Sec. 1468, Rev. C. 1907; re-en. Sec. 1777, R.C.M. 1921; Cal. Pol. C. Sec. 2852; re-en. Sec. 1777, R.C.M. 1935; Sec. 32-1512, R.C.M. 1947; R.C.M. 1947, 32-1504, 32-1505, 32-1512.

7-14-2824. Preference for landowner. The owner of the land on either bank of the waters to be crossed, with the owner of the land on the left bank descending given preference over the owner of the land on the right bank, is entitled to preference in procuring authority to construct a ferry. Whenever the owners of the banks do not apply for such authority within a reasonable time after the necessity therefor arises, the board of commissioners may grant authority to another.

History: En. Sec. 2833, Pol. C. 1895; re-en. Sec. 1470, Rev. C. 1907; re-en. Sec. 1779, R.C.M. 1921; Cal. Pol. C. Sec. 2854; re-en. Sec. 1779, R.C.M. 1935; R.C.M. 1947, 32-1514; amd. Sec. 9, Ch. 253, L. 1979.

7-14-2825. Establishment of new ferry near existing ferry. No toll ferry must be established within 1 mile immediately above or below a regularly established ferry unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice required, notice of intention to apply for authority to erect a toll ferry must be served upon the proprietor of the ferry already established, at least 10 days prior thereto, giving the time and place and grounds of such application.

History: En. Sec. 2832, Pol. C. 1895; re-en. Sec. 1469, Rev. C. 1907; re-en. Sec. 1778, R.C.M. 1921; Cal. Pol. C. Sec. 2853; re-en. Sec. 1778, R.C.M. 1935; R.C.M. 1947, 32-1513.

7-14-2826. Regulation of ferry operation — penalties. (1) The board of commissioners may make all needful rules for the government of ferries and ferrykeepers prescribing:

(a) how many boats must be kept, their character, and how propelled;

(b) the number of hands, boatmen, or ferrymen to be employed and rules for their government;

(c) when and under what circumstances to make trips in the nighttime;

(d) who may be ferried free of toll;

(e) in what cases of danger or peril not to cross;

(f) penalties for violation of regulations;

(g) in case of steamboats, the rate of speed;

(h) the method of and preference in loading and crossing; and

(i) how and by whom action must be brought to recover penalties.

(2) Subject to the foregoing regulations, ferrykeepers must make trips to accommodate all passengers who desire to cross, and any failure to do so subjects the franchise to forfeiture by a proper proceeding for that purpose.

(3) The owner of every ferry must have the rates of toll, as fixed by the board, printed or written and posted in some conspicuous place on or near the ferry.

(4) All ferrykeepers must keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day compliance herewith is neglected, $25 is forfeited, to be collected for the use of the road fund of the county.

History: (1)En. Sec. 2826, Pol. C. 1895; re-en. Sec. 1463, Rev. C. 1907; re-en. Sec. 1772, R.C.M. 1921; Cal. Pol. C. Sec. 2894; re-en. Sec. 1772, R.C.M. 1935; Sec. 32-1507, R.C.M. 1947; (2)En. Sec. 2827, Pol. C. 1895; re-en. Sec. 1464, Rev. C. 1907; re-en. Sec. 1773, R.C.M. 1921; re-en. Sec. 1773, R.C.M. 1935; Sec. 32-1508, R.C.M. 1947; (3)En. Sec. 2835, Pol. C. 1895; re-en. Sec. 1472, Rev. C. 1907; re-en. Sec. 1781, R.C.M. 1921; Cal. Pol. C. Sec. 2856; re-en. Sec. 1781, R.C.M. 1935; Sec. 32-1516, R.C.M. 1947; (4)En. Sec. 2836, Pol. C. 1895; re-en. Sec. 1473, Rev. C. 1907; re-en. Sec. 1782, R.C.M. 1921; Cal. Pol. C. Sec. 2858; re-en. Sec. 1782, R.C.M. 1935; Sec. 32-1517, R.C.M. 1947; R.C.M. 1947, 32-1507, 32-1508, 32-1516, 32-1517.

7-14-2827. Surety bond required. The bond required of the owner or keeper of the ferry must be in the sum fixed by the board of commissioners, with one or more sureties, and conditioned that the ferry will be kept in good repair and condition and that the keeper will faithfully comply with the laws of the state and all legal orders of the board regulating the same and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such ferry or in any manner resulting from a noncompliance with the laws or lawful orders regulating the same. The bond must be approved by the board.

History: En. Sec. 2829, Pol. C. 1895; re-en. Sec. 1466, Rev. C. 1907; re-en. Sec. 1775, R.C.M. 1921; Cal. Pol. C. Sec. 2850; re-en. Sec. 1775, R.C.M. 1935; R.C.M. 1947, 32-1510.

7-14-2828. Report required. Every owner or keeper of a ferry must report annually to the board of commissioners from which his license is obtained, under oath, the following facts:

(1) the actual cost of the construction or erection and equipment of the ferry;

(2) the repairs made during the preceding year and the actual cost thereof;

(3) the expense of labor and hire of agents and other costs necessarily incurred in and about the conduct of his business;

(4) the amount of tolls collected; and

(5) the estimated actual cash value of the ferry, exclusive of the franchise.

History: **En. Sec. 2825, Pol. C. 1895; re-en. Sec. 1462, Rev. C. 1907; re-en. Sec. 1771, R.C.M. 1921; Cal. Pol. C. Sec. 2847; re-en. Sec. 1771, R.C.M. 1935; R.C.M. 1947, 32-1506.**

7-14-2829. Acquisition of land for ferry. When there are lands necessary for the construction, erection, or use of such ferry which cannot be procured by agreement between the owner and the landowner, the right-of-way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

History: **En. Sec. 2834, Pol. C. 1895; re-en. Sec. 1471, Rev. C. 1907; re-en. Sec. 1780, R.C.M. 1921; Cal. Pol. C. Sec. 2855; re-en. Sec. 1780, R.C.M. 1935; R.C.M. 1947, 32-1515.**

7-14-2830. Procedure to administer license tax. The license tax for a ferry connecting two counties must be paid to the treasurer of the county granting the license issued, but the treasurer of such county must annually pay to the treasury of the county in which the other end or landing of the ferry is located one-half of the sum so received.

History: **En. Sec. 2830, Pol. C. 1895; re-en. Sec. 1467, Rev. C. 1907; re-en. Sec. 1776, R.C.M. 1921; Cal. Pol. C. Sec. 2851; re-en. Sec. 1776, R.C.M. 1935; R.C.M. 1947, 32-1511.**

7-14-2831. Use of penalties. Penalties recovered under 7-14-2821 through 7-14-2830 must be paid to the county treasury for the use of the general road fund of the county.

History: **En. Sec. 2828, Pol. C. 1895; re-en. Sec. 1465, Rev. C. 1907; re-en. Sec. 1774, R.C.M. 1921; Cal. Pol. C. Sec. 2895; re-en. Sec. 1774, R.C.M. 1935; R.C.M. 1947, 32-1509.**

Parts 29 through 40 reserved

Part 41

General Provisions Related to Municipal Trafficways and Public Grounds

7-14-4101. Municipal authority to establish, alter, and maintain trafficways and public grounds. (1) The city or town council has power to lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, and public grounds and to vacate the same.

(2) The council has power to order any work provided in this code to be done upon the streets, alleys, or public places of a city or town.

History: **(1)En. Subd. 6, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.5, R.C.M. 1935; Sec. 11-906, R.C.M. 1947; (2)En. Sec. 4879, Pol. C. 1895; re-en. Sec. 3365, Rev. C. 1907; re-en. Sec. 5223, R.C.M. 1921; re-en. Sec. 5223, R.C.M. 1935; Sec. 84-4736, R.C.M. 1947; R.C.M. 1947, 11-906(part), 84-4736.**

7-14-4102. Regulation of trafficways and public grounds. The city or town council has power to:

(1) regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction;

(2) regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds;

(3) regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town;

(4) provide for and regulate street crossings, curbs, and gutters;

(5) prevent horse racing or immoderate driving or riding in the streets of the city or town and regulate and provide for the hitching of all animals on the streets;

(6) regulate or prohibit coasting, skating, sliding, or toboganning on the streets or alleys or the indulgence in other amusements dangerous or annoying to the inhabitants or having a tendency to frighten animals.

History: En. Subds. 8, 9, 10, 40, 41, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.7, 5039.8, 5039.9, 5039.39, 5039.40, R.C.M. 1935; R.C.M. 1947, 11-910, 11-911, 11-912, 11-942, 11-943.

7-14-4103. Regulation of motor vehicles. (1) The council of any incorporated city or town shall have power, by ordinance, to regulate motor vehicles and their speed within the limits of such city or town and to prescribe and enforce fines and penalties for violation of such regulations.

(2) As used in this section, the term "motor vehicles" shall include all vehicles propelled by any power other than muscular power, except traction engines, road rollers, fire wagons and engines, fire department vehicles, and police patrol wagons.

History: (1)En. Sec. 1, Ch. 49, L. 1917; re-en. Sec. 5041, R.C.M. 1921; re-en. Sec. 5041, R.C.M. 1935; Sec. 11-1002, R.C.M. 1947; (2)En. Sec. 2, Ch. 49, L. 1917; re-en. Sec. 5042, R.C.M. 1921; re-en. Sec. 5042, R.C.M. 1935; Sec. 11-1003, R.C.M. 1947; R.C.M. 1947, 11-1002, 11-1003.

7-14-4104. Prevention of obstructions on trafficways and public grounds. The city or town council has power to prevent the encumbering of streets, sidewalks, alleys, or public grounds with carriages, wagons, lumber, firewood, or other obstacles or materials.

History: En. Subd. 38, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.37, R.C.M. 1935; R.C.M. 1947, 11-940.

7-14-4105. Lighting and cleaning of trafficways and public grounds. The city or town council has power to:

(1) provide for lighting and cleaning the streets, alleys, and avenues;

(2) regulate the disposition and removal of ashes, garbage, or other offensive matter in any street or alley, on public grounds, or on any premises;

(3) regulate the use of sidewalks and require the owners of the adjoining premises to keep the same free from snow or other obstruction.

History: En. Subd. 7, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.6, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1943; R.C.M. 1947, 11-909(part).

7-14-4106. Payment for cost of removing waste. (1) The city or town council has power to provide for levying the cost of the removal provided for in 7-14-4105(2) as a special tax against the property from which such matter was deposited.

(2) The city or town council may further, until full liquidation is realized, include in such tax an amount not to exceed 20% of any floating indebtedness consisting of valid outstanding warrants drawn and issued against the fund or funds used to defray the expense of removing such matter, existing at the close of business on June 30, 1943, together with not to exceed such per centum of the current interest thereon from such last-mentioned date. The money derived from such portion of such levy and assessment for such additional amount, if included in such tax, may only be expended toward liquidating such floating indebtedness, together with the interest thereon, and not otherwise.

History: En. Subd. 7, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.6, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1943; R.C.M. 1947, 11-909(part).

7-14-4107. Sprinkling of trafficways. The city or town council has power to provide for the sprinkling of the streets, alleys, and public places of the city or town and to fix the rates to defray the cost of said work.

History: En. Subd. 69, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.68, R.C.M. 1935; R.C.M. 1947, 11-971.

7-14-4108. Authority to contract for road work when federal funds involved. Whenever highway construction work is to be financed in whole or in part by federal funds, the council, commission, or other governing body of any city or town may contract jointly or independently with the department of highways, United States federal highway administration, or other federal agency for the construction or reconstruction of highways, roads, and streets, to acquire rights-of-way, and to do any other thing essential and practical in securing the highway, road, and street construction or reconstruction or rights-of-way as may be agreed upon between the council, commission, or other governing body and the department of highways or federal agency. All contracts for work on highways, roads, and streets which are let pursuant to this authority shall be let by the highway commission.

History: En. Sec. 1, Ch. 69, L. 1957; amd. Sec. 1, Ch. 316, L. 1974; R.C.M. 1947, 11-1023.

7-14-4109. Power to order certain improvements without creation of special improvement district. (1) Without the formation of a special improvement district, the city council may order sidewalks, curbs, or gutters constructed in front of any lot or parcel of land and may order alley approaches constructed or replaced adjacent to any lot or parcel of land.

(2) Whenever the council orders any such sidewalk, curb, or gutter constructed or any such alley approach constructed or replaced, the order shall be entered upon the minutes of the council and shall name the street along which the sidewalk, curb, or gutter is to be constructed or along which the alley approach is to be constructed or replaced.

(3) After the making of such order, written notice thereof shall be given the owner or agent of the owner of such property or the owners or agents of all adjacent owners having access to their properties by the alley approach, as appropriate, in such manner as the council may direct.

(4) If the owner or agent of the owner of such lot or parcel of land or if the owners or agents of all adjacent owners having access to their property by the alley approach fail or neglect for a period of 30 days after the date

of service of the notice to cause such sidewalk, curb, or gutter to be constructed or to cause such alley approaches to be constructed or replaced, the city may construct or cause the sidewalk, curb, or gutter to be constructed or may construct or cause the alley approach to be constructed and shall assess the cost thereof, including engineering costs and the costs enumerated in 7-12-4121 and 7-12-4169, against the property in front of which the same is constructed or against the lots or parcels of land having access via the constructed alley approaches. The collection of the assessed costs shall be as provided in 7-12-4181 through 7-12-4191.

(5) (a) When any sidewalk, curb, or gutter or alley approach is constructed by or under direction of the city council, payment for the construction shall be made by special warrants in such form as may be prescribed by ordinance and drawn against a fund to be known as the special sidewalk, curb, and gutter fund or the special alley approach fund, as appropriate, and the council may provide for the payment of interest annually.

(b) The warrants drawn on the special alley approach fund shall bear interest at a rate of up to 6% a year.

History: Ap. p. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R.C.M. 1921; amd. Sec. 1, Ch. 12, L. 1929; re-en. Sec. 5244, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971; Sec. 11-2226, R.C.M. 1947; Ap. p. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; Sec. 11-2226.1, R.C.M. 1947; R.C.M. 1947, 11-2226(part), 11-2226.1(part); amd. Sec. 10, Ch. 253, L. 1979.

7-14-4110. Assessments for costs. (1) The payment of assessments to defray the cost of construction of the sidewalks, curbs, and gutters referred to in 7-14-4109 or any combination thereof or alley approach may be spread over a term of not to exceed 8 years, payment to be made in equal annual installments.

(2) The city council shall, annually before the first Monday of October, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs, and gutters or any combination thereof have been constructed under orders of the city council or each lot or parcel of land having access to said property via the alley approach which has been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: Ap. p. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R.C.M. 1921; amd. Sec. 1, Ch. 12, L. 1929; re-en. Sec. 5244, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971; Sec. 11-2226, R.C.M. 1947; Ap. p. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; Sec. 11-2226.1, R.C.M. 1947; R.C.M. 1947, 11-2226(part), 11-2226.1(part).

7-14-4111. Determination of alley approach. What constitutes an alley approach shall be defined by the city council of each municipality which orders in alley approaches as provided in 7-14-4109.

History: En. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; R.C.M. 1947, 11-2226.1(part).

7-14-4112. Change of name of street. (1) Any town or city council may in its judgment, when it appears to the best interest of the town or city and the inhabitants thereof, expressed by resolution duly and regularly passed and adopted, change the name or number of any street or avenue, subject to the conditions provided for in subsection (2), except that 51% of the property owners objecting to the change of name or question involved shall be supreme in this matter.

(2) The town or city engineer (if there be no such officer, the council may employ one for such purpose) shall prepare a plat showing such subdivisions, streets, and avenues affected by such change, with the appropriate notation of change thereon. Upon approval of such plat by the council and the filing of the same as approved with the county clerk and recorder wherein the town or city is situated, the names or numbers of said streets and avenues shall be deemed changed in accordance to the terms of said resolution as provided for in subsection (1).

History: En. Secs. 1, 2, Ch. 21, L. 1939; R.C.M. 1947, 11-907, 11-908.

7-14-4113. Use of city road fund. The city treasurer shall hold the fees paid pursuant to 7-14-2512(1)(b) in a separate city road fund which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

History: En. Sec. 7-203, Ch. 197, L. 1965; amd. Sec. 2, Ch. 467, L. 1975; R.C.M. 1947, 32-3703(2).

7-14-4114. Procedure to discontinue streets. (1) The council may discontinue a street or alley or any part thereof in a city or town upon the petition in writing of all owners of lots on the street or alley, if it can be done without detriment to the public interest.

(2) Where the street or alley is to be closed for school purposes, a petition signed by 75% of the lot owners on the whole street or alley to be closed will be required.

(3) Before acting upon such petition, a notice must be published or posted in three public places, stating when such petition will be acted on and what street or alley or part thereof is asked to be vacated. Such notice must be published in a newspaper or posted at least 1 week before the petition is acted on.

History: (1), (2)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; Sec. 11-2801, R.C.M. 1947; (3)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R.C.M. 1921; re-en. Sec. 5307, R.C.M. 1935; Sec. 11-2802, R.C.M. 1947; R.C.M. 1947, 11-2801(part), 11-2802.

7-14-4115. Discontinuance of street not to affect utility easements. The vacation authorized by 7-14-4114 shall not affect the right of any public utility to continue to maintain its plant and equipment in any such streets or alleys.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; R.C.M. 1947, 11-2801(part).

7-14-4116 through 7-14-4120 reserved.

7-14-4121. Maintenance and regulation of public grounds. The city or town council has power to provide for enclosing, improving, and regulating all public grounds belonging to the city or town.

History: En. Subd. 74, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.73, R.C.M. 1935; R.C.M. 1947, 11-976.

7-14-4122. Construction and maintenance of sidewalks, curbs, and gutters. (1) The city or town council has power to regulate and provide for the construction or repair of sidewalks, foot pavements, curbs, gutters, or any combination thereof.

(2) If the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the council may contract for the construction and repair of such sidewalks, pavements, curbs, gutters, or any combination thereof and the city or town may pay for the same. The amount so paid is a lien upon the lot and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

History: En. Subd. 65, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.64, R.C.M. 1935; R.C.M. 1947, 11-967.

7-14-4123. Regulation of sidewalks. The city or town council has power to prevent the riding or driving of animals or the drawing or riding of vehicles of any kind on the sidewalks of the city or the doing of damage in any way to the sidewalks.

History: En. Subd. 39, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.38, R.C.M. 1935; R.C.M. 1947, 11-941.

Part 42

Establishment and Change of Street Grade

7-14-4201. Establishment and alteration of street grade. (1) The city or town council has power to establish the grade of any street, alley, or avenue.

(2) When the grade has been established, it must not be changed except by a vote of the majority of the council and not then until the damage to property owners caused by the change of grade has been assessed and determined by three disinterested appraisers, who must be appointed by the mayor and confirmed by the council, who must make an appraisement, taking into consideration the benefits, if any, to the property, and who must file their report with the clerk within 10 days after receiving notice of their appointment. The amount of damages so assessed must be tendered to the owner or his agent before any change of grade is made.

History: En. Subd. 68, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.67, R.C.M. 1935; R.C.M. 1947, 11-970.

7-14-4202. Payment of damages resulting from change of grade. When the grade of any street or sidewalk in any city or town is established by the corporate authority of such city or town and a building shall thereafter be constructed upon a lot abutting on said street, no change must be made in the grade of such street or sidewalk which requires the raising or lowering of any building so constructed until the damages which may accrue by reason of such raising or lowering are ascertained and paid as is hereinafter provided.

History: En. Sec. 4940, Pol. C. 1895; re-en. Sec. 3441, Rev. C. 1907; re-en. Sec. 5300, R.C.M. 1921; re-en. Sec. 5300, R.C.M. 1935; R.C.M. 1947, 11-2601.

7-14-4203. Determination of damages. (1) In case the council of such city or town and the owner of such building are unable to agree upon the amount of such damages, the council must appoint three disinterested freeholders of such city or town to appraise such damages.

(2) The appraisers so appointed, after being duly sworn, must appraise the damage and make two written reports thereof, signed by at least a majority of them, one of which must be delivered to the clerk of such city or town to be immediately filed in his office and the other to the owner of the building. Such report must be made and delivered within 10 days after the appointment of the appraisers.

History: Ap. p. Sec. 4941, Pol. C. 1895; re-en. Sec. 3442, Rev. C. 1907; re-en. Sec. 5301, R.C.M. 1921; re-en. Sec. 5301, R.C.M. 1935; Sec. 11-2602, R.C.M. 1947; Ap. p. Sec. 4942, Pol. C. 1895; re-en. Sec. 3443, Rev. C. 1907; re-en. Sec. 5302, R.C.M. 1921; re-en. Sec. 5302, R.C.M. 1935; Sec. 11-2603, R.C.M. 1947; R.C.M. 1947, 11-2602, 11-2603.

7-14-4204. Appeal from determination of damages. (1) Within 20 days after the filing of the report with the clerk, either party feeling dissatisfied with such appraisement may file in the office of the clerk of the district court within the county in which such city or town is located a copy of such report, certified by the clerk of such city or town, and file with said clerk and serve on the opposite party a notice of appeal from such report.

(2) Upon the filing of the report and the notice of appeal, the clerk of the district court must cause such proceedings to be entered on the register of actions, designating such city or town as plaintiff and the owner of the building as defendant. The question of the amount of damages may be tried by a jury or the court.

(3) The report of the appraisers is the complaint, all the material facts of which in reference to damages are considered denied, and these constitute the issues to be tried.

History: (1), (2)En. Sec. 4943, Pol. C. 1895; re-en. Sec. 3444, Rev. C. 1907; re-en. Sec. 5303, R.C.M. 1921; re-en. Sec. 5303, R.C.M. 1935; Sec. 11-2604, R.C.M. 1947; (3)En. Sec. 4944, Pol. C. 1895; re-en. Sec. 3445, Rev. C. 1907; re-en. Sec. 5304, R.C.M. 1921; re-en. Sec. 5304, R.C.M. 1935; Sec. 11-2605, R.C.M. 1947; R.C.M. 1947, 11-2604, 11-2605.

7-14-4205. Payment of costs. In case the owner of the building appeals and the damages are not increased or in case the city or town appeals and the damages are decreased in the district court, the costs must be paid by the defendant. In all other cases or in the case no appeal is taken, the costs must be paid by the city or town.

History: En. Sec. 4945, Pol. C. 1895; re-en. Sec. 3446, Rev. C. 1907; re-en. Sec. 5305, R.C.M. 1921; re-en. Sec. 5305, R.C.M. 1935; R.C.M. 1947, 11-2606.

Part 43

Municipal Regulation of Railways and Street Railroads

7-14-4301. Regulation of railways. (1) The city or town council has power to grant the right-of-way through the streets, avenues, and other property of a city or town for the purpose of street or other railroads, to regulate the running and management of the same and to compel the owner of such street or other railroad to keep the street in repair when occupied by such street or other railroad, to regulate the speed of railroad engines, and to require railroad companies to station flagmen at street crossings.

(2) The city or town council has power to regulate and control the laying of railroad tracks and to prohibit the use of engines and locomotives propelled by steam or otherwise or to regulate the speed thereof when used.

History: (1)En. Subd. 66, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.65, R.C.M. 1935; Sec. 11-968, R.C.M. 1947; (2)En. Subd. 11, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.10, R.C.M. 1935; Sec. 11-913, R.C.M. 1947; R.C.M. 1947, 11-913, 11-968.

7-14-4302. Regulation of lighting for railway right-of-way — crossings. (1) The city or town council may require the lighting of any railroad track or route within a city or town, the cars of which are propelled by steam or otherwise, and fix and determine the number, style, and size of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location of the lampposts.

(2) The city or town council may:

(a) require the construction of crossings on the line of any railroad track or route within the city or town, the cars of which are propelled by steam or otherwise, where the track intersects or crosses any street, alley, or public highway or runs along the same; and

(b) fix and determine the size, kind, and grade of the crossing.

(3) In case the owner of such railroad fails to comply with the requirements, the council may cause the same to be done. The council may assess the expense thereof against the owner, and the expense constitutes a lien on any property belonging to the owner within the city or town and may be collected as other taxes.

History: En. Subd. 12, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.11, R.C.M. 1935; R.C.M. 1947, 11-914; amd. Sec. 11, Ch. 253, L. 1979.

7-14-4303. Authorization for and regulation of street railroads. The city or town council has power to license and authorize the construction and operation of street railroads and to require them to conform to the grade of the street as the same is or may be established.

History: En. Subd. 13, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.12, R.C.M. 1935; R.C.M. 1947, 11-915.

Part 44

Municipal Bus Services

7-14-4401. Provision of bus service. Whenever a city or town is not being served by a bus company or operator operating on a regular schedule and under the jurisdiction of the public service commission or if such service is likely to be discontinued in the immediate future, the city or town council of the incorporated city or town:

(1) may contract an indebtedness of any such city or town upon the credit thereof by borrowing money or issuing bonds for the purchase, development, operation, or leasing of motorbuses and buslines for the transportation of passengers within the corporate limits of such cities and towns and to operate the same to any point or points beyond these limits not to exceed 8 miles measured along the route of the busline;

(2) shall have the power to enter into a contract or contracts or to enter into a lease or a lease and operating agreement with an independent carrier or independent carriers for the transportation of passengers by bus within the corporate limits of such city or town and to and from any point or points beyond said limits not to exceed 8 miles measured along the route of said busline or buslines.

History: Ap. p. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; amd. Sec. 24, Ch. 566, L. 1977; Sec. 11-1019, R.C.M. 1947; Ap. p. Sec. 3, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; Sec. 11-1021, R.C.M. 1947; R.C.M. 1947, 11-1019(part), 11-1021(part).

7-14-4402. Limit on indebtedness to provide bus service. The total amount of indebtedness authorized under 7-14-4401(1) to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 18% of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes. No money may be borrowed or bonds issued for the purposes specified in 7-14-4401(1) until the proposition has been submitted to the vote of the taxpayers of the city or town and the majority vote cast in its favor.

History: En. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; amd. Sec. 24, Ch. 566, L. 1977; R.C.M. 1947, 11-1019(part).

7-14-4403. Operation of municipal busline. (1) The city or town council or commission shall have authority to provide for the management and operation of the system authorized by 7-14-4401(1) and to do all things necessary for the successful operation of said transportation system.

(2) Such operations shall be subject to all the provisions of (Title 69, chapter 12) except that:

(a) such municipality may be issued a certificate of public convenience and necessity without proof of the existence of public convenience and necessity; and

(b) the municipality shall be exempt from the payment of fees provided by 69-12-421 and 69-12-422.

History: En. Sec. 2, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; R.C.M. 1947, 11-1020.

7-14-4404. Tax levy for contracts to operate bus service. For the purpose of raising the necessary money to defray the cost of the transportation service authorized by 7-14-4401(2) pursuant to such contract, lease, or lease and operating agreement with such independent carrier or carriers, the city or town council may annually levy a tax on the taxable value of all taxable property within the limits of the city or town. Whenever the council of the city or town considers it necessary to raise money by taxation for such purpose in excess of the levy now allowed by law, the council of the city or town shall in the manner prescribed by law submit the question of such additional levy to the qualified electors of the city or town, either at the regular annual election held in the city or town or at a special election called for that purpose by the council of the city or town. The additional levy in excess of the levy now allowed by law may not exceed 1 ½ mills.

History: En. Sec. 3, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 11-1021(part); amd. Sec. 12, Ch. 253, L. 1979.

7-14-4405. Bids for bus service contracts authorized — operation of bus service. The city or town council shall have power and authority to call for bids from independent carriers for such transportation service authorized by 7-14-4401(2) and to do all things necessary or proper for establishment and maintenance of such transportation service by contract, lease, or lease and operating agreement.

History: En. Sec. 4, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; R.C.M. 1947, 11-1022.

Part 45

Municipal Parking

7-14-4501. Acquisition, construction, and maintenance of parking areas. A city or town council shall have power to:

(1) acquire by lease, gift, purchase, or condemnation lots or lands for use as parking areas for motor vehicles;

(2) construct and maintain thereon or on any premises owned or under lease by such city or town suitable parking facilities for the use of the public and for general traffic control; and

(3) make charges for the use of such facilities.

History: En. Sec. 1, Ch. 96, L. 1951; R.C.M. 1947, 11-1018(part).

7-14-4502. Bond issue to finance parking areas. A city or town council shall have power to:

(1) issue bonds or other securities for the payment of the lots or lands and facilities referred to in 7-14-4501, payable in whole or in part from the revenues of any such parking lots or areas or parking facilities or from other sources; and

(2) pledge, place a charge upon, or otherwise make available as additional security for the payment of such bonds or securities any or all revenues from any or all street parking meters owned or to be owned and controlled by said city or town.

History: En. Sec. 1, Ch. 96, L. 1951; R.C.M. 1947, 11-1018(part).

7-14-4503 through 7-14-4510 reserved.

7-14-4511. Provision of parking meters in smaller municipalities — ordinance required. The city or town council of any incorporated city or town of 2,500 population or less is hereby empowered to enact an ordinance or ordinances:

(1) to purchase, rent, lease, or otherwise acquire coin-operating parking meters or other devices or instruments used for the purpose of measuring the duration of time an automobile or other vehicle is parked;

(2) to install, maintain, and operate said meters, devices, or instruments at or near any public street, highway, avenue, or other public place within the corporate limits of such city or town;

(3) to provide for such regulations as necessary to govern the use of its public streets, highways, avenues, or other public places for the purpose of parking automobiles or other vehicles and the use of said meters, devices, or

instruments in conjunction therewith, including the establishment and designation of zones or areas where said meters, devices, or instruments are to be used.

History: En. Sec. 1, Ch. 91, L. 1949; R.C.M. 1947, 11-1015.

7-14-4512. Referendum on parking meters prior to enacting ordinance. No ordinance or ordinances providing for the purchasing, renting, leasing, or otherwise acquiring or installing, maintaining, operating, or using such parking meters, devices, or instruments shall be enacted until and unless the question of whether or not such ordinance or ordinances shall be enacted has been submitted to the qualified electors of such city or town at a general election or special election called for that purpose and unless at such election a majority of the votes cast for and against the question shall have been in favor of the enacting of said ordinance or ordinances.

History: En. Sec. 2, Ch. 91, L. 1949; R.C.M. 1947, 11-1016.

Part 46

Parking Commissions

7-14-4601. Findings and purpose. (1) It is hereby determined and declared that excessive curb parking of motor vehicles in urban and metropolitan areas and the lack of adequate offstreet parking facilities in some cities is against the public interest.

(2) The purpose of this part is to provide means whereby cities in which additional offstreet parking facilities are considered necessary may obtain and provide same and whereby such cities may regulate onstreet and offstreet parking in a coordinated manner.

History: En. Sec. 1, Ch. 223, L. 1951; amd. Sec. 1, Ch. 127, L. 1955; amd. Sec. 2, Ch. 77, L. 1975; R.C.M. 1947, 11-3701.

7-14-4602. Definitions. The following terms, wherever used or referred to in this part, shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) "City" shall mean the particular city for which a particular commission may be created or which may act as such a commission pursuant to resolution of its legislative body.

(2) "Clause" includes article, section, subsection, paragraph, sentence, or provision.

(3) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(4) "Commission" or "parking commission" shall mean any of the public corporations which may be created by a city and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legislative body under the provisions of 7-14-4603 through 7-14-4608.

(5) "Indenture" means ordinance, resolution, or indenture which may be passed, adopted, or entered into by a commission or by the legislative body of a city.

(6) "Legislative body" shall mean the city council or other body in which the general legislative powers of the city are vested.

(7) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(8) "Obligee of the commission" or "obligee" shall be any bondholder, trustee or trustees for any bondholders, or lessor demising to the commission property used in connection with a parking facility or any assignee or assignees of such lessor's interest or any part thereof and the state or the United States or any agency of either when a party to any contract with a commission by which aid or a loan is given or made to the commission.

(9) "Project" shall mean any acquisition, improvement, construction, or undertaking of any kind authorized by this part.

(10) "State public body" means the state or any city, commission, or any other subdivision or public body of the state.

History: **En. Sec. 2, Ch. 223, L. 1951; amd. Sec. 1, Ch. 401, L. 1973; R.C.M. 1947, 11-3702.**

7-14-4603. Creation of parking commission authorized. A city may create, as provided for in 7-14-4603 through 7-14-4608, a public body to be known as the parking commission of the city. The commission of any city shall not transact any business or exercise any powers under this part unless and until the legislative body of the city shall by resolution declare that there is need for a parking commission to function in such city.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4604. Public nature of parking commission. Each commission shall constitute a public body, corporate and politic, exercising public and essential governmental functions.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4605. Determination of need to create parking commission. The determination as to whether there is need for a commission to function may be made by the legislative body on its own motion or upon the filing of a petition signed by 100 residents of the city asserting that there is need for a commission to function in such city and requesting that the legislative body so declare.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4606. Resolution of need required. A city shall not transact any business or exercise any powers of this part unless and until the legislative body of the city shall by resolution declare that there is need for such city to exercise the powers of a parking commission as provided in this part.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4607. Resolution for parking commission to function. In any suit, action, or proceeding by or against or in any manner relating to a parking commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of a resolution by the legislative body declaring the need for the commission to function.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4608. Adoption of resolutions — jurisdictional area. Either or both such resolutions referred to in 7-14-4606 and 7-14-4607 may be adopted by the legislative body of a city. If both such resolutions are adopted, they shall clearly specify areas within the city, less than the whole thereof, within which or projects over which the commission and the city, respectively, are to have jurisdiction and control. The division of such jurisdiction and control shall be as so specified but may be changed from time to time by action of both the legislative body and the commission to such extent as may be consistent with obligations to bondholders assumed under this part.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4609. Appointment of commission. (1) When the legislative body of a city first adopts a resolution declaring need for a parking commission to function, the mayor, with the approval of the legislative body, shall appoint not less than five or more than seven electors of the city as members of the commission.

(2) The number of members of such commission, once established, may be changed within these limits from time to time as desired by subsequent resolutions of the legislative body of the city. A resolution to reduce shall not require resignation of any member prior to completion of his appointed term.

History: **En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).**

7-14-4610. Term of office. (1) Three of the members who are first appointed shall be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two shall be designated to serve for terms of 4 years from the date of their appointment. For a seven-member commission, there shall be two additional appointments of 2 years and 3 years, respectively.

(2) Thereafter members shall be appointed as aforesaid for a term of office of 4 years, except that all vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until his successor has been appointed and has qualified.

History: **En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).**

7-14-4611. Removal of parking commission member. A member of a commission may be removed by the mayor with the consent of the legislative body of the city.

History: **En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).**

7-14-4612. Organization and operation of commission. (1) The powers of each commission shall be vested in the members thereof then in office.

(2) The appointing officer shall designate which of the members of the commission shall be the first chairman, but when the office of chairman of the commission becomes vacant thereafter, the commission shall elect a chairman from among its members. The term of office as chairman of the commission, unless otherwise prescribed by the legislative body of the city, shall be for the calendar year or for that portion thereof remaining after each such chairman is designated or elected.

(3) Members shall receive their actual and necessary expenses, including traveling expenses, and may receive such other compensation as the legislative body may prescribe.

History: **En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).**

7-14-4613. Funds for administrative purposes of parking commission. When any city or the commission created for it becomes authorized to transact business and exercise the powers of a parking commission, the legislative body of the city, subject to its fiscal law, may, at that time and from time to time thereafter, make an estimate of the amount of money required for administrative purposes of the commission and may appropriate such amounts to the commission as it deems necessary, subject to such conditions as the legislative body may prescribe.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(1).

7-14-4614. Annual audit of financial affairs of parking commission. The financial affairs of the parking commission shall be audited annually by independent certified public accountants.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(part).

7-14-4615. Reports on commission transactions. The legislative body shall cause:

(1) a detailed report of all transactions of the parking commission, including a statement of all revenues and expenditures, to be filed with it at quarterly, semiannual, or annual intervals as the legislative body may prescribe; and

(2) a summary statement of all its financial affairs to be published at least once annually in a newspaper of general circulation published in the city or, if none is so published, then in such newspaper of general circulation as it may deem most likely to give notice to all residents of the city.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(part).

7-14-4616. Termination of parking commission due to inaction — windup of commission affairs. (1) After the lapse of 4 years from the date of adoption of a resolution declaring the need for a parking commission to function in a city, if such commission shall not have acquired or entered into possession of land for a parking facility or issued bonds, the legislative body of such city may by resolution declare that there is no need for such commission in the community. Thereupon the offices of the members of the commission shall become vacant and the capacity of the commission to transact business or exercise any powers shall be suspended and shall remain suspended until the legislative body thereafter adopts a resolution declaring the need for the commission to function.

(2) After adoption of a resolution declaring there is no need for such commission to function or while any such resolution is in effect, the legislative body of a city shall have power to wind up the affairs of the commission and shall have title to all property of the commission for the purpose of offstreet parking only, to be leased to and operated by companies, individuals, or corporations.

History: En. Sec. 6, Ch. 223, L. 1951; R.C.M. 1947, 11-3706(part).

7-14-4617 through 7-14-4620 reserved.

7-14-4621. General powers of parking commission. Each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to sue and be sued, have a seal, make and execute contracts and other instruments necessary or convenient to the exercise of its powers;

(2) to make and from time to time amend and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes thereof;

(3) to select and appoint or remove such officers, agents, counsel, and employees, permanent and temporary, as it may require and to determine their qualifications, duties, and compensation;

(4) to exercise all or any part or combination of the powers granted in this part;

(5) to do and perform any and all other acts and things necessary, convenient, desirable, or appropriate to carry out the provisions of this part.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4622. Powers of parking commission related to provision of parking services. For the purpose of offstreet parking, each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to purchase, lease, obtain option upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein, together with any improvements thereon;

(2) to acquire by the exercise of the power of eminent domain any property in accordance with the applicable provisions of the law of eminent domain upon approval of the city council;

(3) to sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest therein;

(4) to lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights-of-way necessary or convenient therefor;

(5) to insure or provide for the insurance of any real or personal property or operation of the commission against risks or hazards;

(6) to acquire, construct, rent, lease, maintain, and repair such real and personal property or any portion thereof, either on behalf of the commission or as an agent of the city, including the leasing of the operation thereof;

(7) to regulate onstreet parking where it remains in use, in coordination with offstreet parking, subject to traffic regulations imposed by the state.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4623. Transfer of parking commission property to municipality. The legislative body of a city, at any time after the activation of a parking commission, may adopt by a two-thirds vote thereof a resolution transferring the property of the commission to the city. The city may, through such department as it may determine, exercise its powers in regard thereto by virtue of the constitution or this or other general law, but no such transfer shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

History: **En. Sec. 6, Ch. 223, L. 1951; R.C.M. 1947, 11-3706(part).**

7-14-4624. Powers of commission related to financial management. Each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to receive, control, and order the expenditure of any and all money and funds pertaining to parking facilities or related properties, including, without limiting the generality of this provision:

(a) all revenues derived from operations of the commission;

(b) all money appropriated or made available by the city pursuant to this section or otherwise;

(c) the proceeds of all financial aid or assistance by the city, federal, or state governments;

(d) the proceeds of levied assessments;

(e) the proceeds of all revenue bonds issued pursuant to this part by the city for parking facilities;

(2) to invest any funds held in reserve or sinking funds or any funds not required for immediate disbursement in property or securities in which cities may legally invest funds subject to their control, but no such investment shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4625. Limitation on employment powers. The powers of the commission under 7-14-4621(3) shall be subject to all limitations and rights applicable to similar employment by the city unless the legislative body by resolution shall otherwise determine.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4626. Limitation on power of eminent domain. (1) Notwithstanding the provisions of 7-14-4622(2), no property of a state public body may be acquired without its consent.

(2) No existing parking facility shall be acquired by the exercise of the power of eminent domain by a commission or the city except after public hearing following notice of the date, time, place, and purpose of such hearing published once not less than 10 or more than 20 days prior to the date of such hearing.

History: (1)En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; Sec. 11-3707, R.C.M. 1947; (2)En. Sec. 8, Ch. 223, L. 1951; amd. Sec. 5, Ch. 77, L. 1975; Sec. 11-3708, R.C.M. 1974; R.C.M. 1947, 11-3707(part), 11-3708.

7-14-4627. Leasing of surplus or uneconomical space for incidental purposes. (1) Subject to the limitations imposed by this part, when in the judgment of the commission it is convenient or necessary to permit such use in order to utilize properly such land as a parking facility, each parking commission shall have power to lease for incidental commercial purposes surplus space or space which it is not economical to use for parking purposes, as an incident to the operation of any parking facility.

(2) The city or parking commission shall be prohibited from operating any such additional, secondary, and incidental facilities. Such incidental use or uses must be secondary to the primary use as a parking facility. The commission or the city shall lease such space to private operators at rates comparable to the existing market rate for similar taxable space at the location.

(3) (a) Except as provided in subsection (3)(b), if a building is erected on such property for the purpose of parking motor vehicles, then such incidental

use or uses of such building shall be confined to the street level and/or below street level of such building. Such incidental use or uses at street level may occupy the entire surface area of the property less that area required for vehicular and pedestrian movement if at least two higher levels, each of equal or greater area, are devoted entirely to parking purposes.

(b) Other provisions notwithstanding, the commission or the city may lease air rights above such building.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4628. Nature of onstreet parking regulations. The parking regulations issued pursuant to 7-14-4622(7) may include, without limiting the generality of this provision, the determination of:

(1) parking locations;
(2) variable parking durations;
(3) variable parking rate schedules; and
(4) enforcement policies and procedures.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4629. Manner of operating parking facility. (1) The commission or city may lease any project acquired by it under the provisions of this part to the highest responsible bidder after notice.

(2) If the commission or city shall, by resolution entered upon its minutes, find and determine that the purposes of this part will not be accomplished and the public interest will not be served by lease of any particular project for operation as a private parking project, the commission may lease such project to the city or the city may operate any such project itself as a municipal parking project, subject to the ordinances and rules of the city pertaining to municipal parking projects.

History: **En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973; R.C.M. 1947, 11-3709(part).**

7-14-4630. Notice for bids to lease parking facility. (1) The notice required by 7-14-4629(1) shall consist of the publication of a notice inviting bids, with two or more insertions thereof, not less than 5 days apart, in a newspaper of general circulation printed and published in such city or city and county. The publication shall be commenced not less than 15 days prior to the date set in the notice for the opening of bids. If there be no newspaper of general circulation printed or published therein, notice shall be given by posting copies of said notice inviting bids in at least three public places in the city or city and county not less than 15 days prior to the date set in the notice for the opening of bids.

(2) Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased, and the minimum rental to be paid under such lease.

History: **En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973; R.C.M. 1947, 11-3709(part).**

7-14-4631. Compliance with land-use laws required. (1) All parking facilities of a commission shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the parking facility is situated.

(2) In the planning and location of any parking facility, a commission shall be subject to the relationship of the facility to any master plan or sections of a master plan for the development of the area in which the commission functions.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).

7-14-4632. Cooperation with other municipal offices. In order that there may be no unnecessary duplication of effort or expense, the commission shall have access, for the purposes of the commission, to the services and facilities of the city planning department, the city engineer, the police department, the fire department, and such other departments and offices of the city as may be appropriate therefor.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).

7-14-4633. Municipality authorized to collect in-lieu payments from parking commission — limitations. The legislative body may by resolution provide for a sum to be paid annually by the commission to the city. This sum shall not exceed the amount the commission would be required to pay in ad valorem taxes if it were a private entity owning the same property and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs or for compliance with any other provisions of indentures securing obligations of the commission.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).

7-14-4634. Charges for use of parking facilities. (1) The commission shall fix the rates, fees, and all other charges to be made for all projects, services, or facilities furnished, acquired, constructed, or completed under this part for the use thereof by any persons or public or private agencies utilizing such projects, services, or facilities. Subject to such contractual obligations as may be entered into by the commission and the holders of the revenue bonds issued under this part, the commission is authorized to change such rates, charges, and fees from time to time as conditions warrant.

(2) All rates, fees, and charges shall be at all times fixed to yield annual revenue which together with other revenue shall be equal to annual operating and maintenance expenses, including insurance costs, and all redemption payments and interest charges on the revenue bonds at any time issued and outstanding in connection with the project of which such facilities are a part as the same become due.

(3) The commission may provide that the rates, fees, and charges established are minimum rates, fees, and charges and subject to increase or decrease in accordance only with the terms of the indenture under which the revenue bonds were issued.

History: En. Sec. 22, Ch. 223, L. 1951; R.C.M. 1947, 11-3722(part).

7-14-4635. Authority to establish lien on charges for payment of bonds. The commission may provide that bond redemption and the interest payment shall constitute a first, direct, and exclusive charge and lien on all such fees, charges, and other revenues and interest thereon and sinking funds created therefrom received from the use and operation of the project for the acquisition, construction, or completion of which such revenue bonds were issued. All such fees and charges and other revenues, together with the interest thereon, shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose so long as such bonds (or any of them) are outstanding and unpaid.

History: **En. Sec. 22, Ch. 223, L. 1951; R.C.M. 1947, 11-3722(part).**

7-14-4636 through 7-14-4640 reserved.

7-14-4641. Authority to issue revenue bonds. The commission shall have power to issue revenue bonds in its name or in that of the city.

History: **En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973; R.C.M. 1947, 11-3711(part).**

7-14-4642. Election required to issue revenue bonds. (1) The power to issue revenue bonds as provided in this part shall not be operative in any city until the legislative body, either at a general or a special election, shall submit to the electors the question as to whether the legislative body, the commission, or both, shall be authorized to adopt the revenue bond method of financing projects provided for herein.

(2) Such question may be placed before the electors and notice thereof given in the same manner as provided by law for referring ordinances of the city to the electors. The qualifications of electors shall be the same as those required for voting at municipal elections in the city for elective officers thereof. The provisions relating to the qualifications of electors and manner of submission of the question to the electors for the purposes of this part shall govern and be controlling, any provision of law to the contrary notwithstanding.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4643. Sources of revenue for payment of revenue bonds. (1) No revenue bonds authorized by 7-14-4641 or the interest thereon shall be payable from or secured by a pledge or mortgage of any funds or properties of the city except those expressly enumerated in subsection (2).

(2) A commission may issue such types of revenue bonds as it may determine, including revenue bonds on which the principal and interest are payable:

(a) exclusively from the income and revenues of the parking facilities financed with the proceeds of such bonds;

(b) exclusively from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds;

(c) from a charge on such revenues either prior or subordinate to the payment of any designated part or all of the costs of operation and maintenance and other expenses of such facilities;

(d) from any contributions or other financial assistance from the state or federal governments;

(e) from any or all onstreet parking meter revenues of the city which may be pledged and appropriated by or under authority of the legislative body for this purpose until the bonds are fully paid;

(f) from the collections of special assessments and interest thereon levied to finance the cost of parking facilities under any of the provisions of parts 41 through 45 of chapter 12 and part 47 of this chapter which may be pledged and appropriated by or under authority of the legislative body for the payment of revenue bonds issued under the provisions of this section and are not pledged for the payment of special improvement district bonds;

(g) from a reserve which may be established and agreed to be maintained by the transfer of such other city funds as may be pledged and appropriated, by or under authority of the legislative body, to meet deficiencies in the reserve until the bonds are fully paid;

(h) from the proceeds of sale upon foreclosure of any mortgage of an offstreet parking facility made by or under authority of the legislative body to secure the payment of any revenue bonds issued under this section, provided that no such mortgage shall be placed upon any property of the city or commission unless the cost of such property to the city has been paid from the proceeds of such bonds; or

(i) any combination of these sources.

History: (1)En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973; Sec. 11-3711, R.C.M. 1947; (2)En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973; Sec. 11-3712, R.C.M. 1947; R.C.M. 1947, 11-3711(part), 11-3712(part).

7-14-4644. Restrictions on use of reserve to make payments on revenue bonds. The funds from which the transfers authorized by 7-14-4643(2)(g) are made shall be reimbursed from the next collections of other revenues enumerated in 7-14-4643 which are not needed for full compliance with provisions of indentures securing all outstanding obligations of the commission. Nothing herein shall permit the levy of taxes at any time in excess of the deficiency then existing in the reserve, but such tax as may be needed, with other funds determined by the legislative body to be available to meet the deficiency, may and shall be levied and shall not be subject to any limitation of rate or amount provided in any other law.

History: En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973; R.C.M. 1947, 11-3712(part).

7-14-4645. Power to determine terms and conditions of revenue bonds. (1) Each commission shall have power to determine by resolution, with reference to each issue of revenue bonds to be issued under this part, all the terms and conditions of such bonds and of the sale and issuance thereof and any and all matters necessary or appropriate to be determined in connection therewith, except only as such power is limited by or under the authority of express provisions of this part.

(2) Without excluding the exercising of any other powers under or in any way limiting the generality of the preceding general grant of power or in any way excluding or limiting the exercising of any or all other powers granted by this part, the general power granted by this section shall include and each such commission shall have and in its discretion may exercise the specific powers provided by this part.

History: En. Sec. 13, Ch. 223, L. 1951; R.C.M. 1947, 11-3713.

7-14-4646. Series or divisions of bonds permitted. (1) The commission may issue revenue bonds in series or may divide any issue into one or two or more divisions and fix different maturities or dates of such bonds, fix different rates of interest, or prescribe different terms and conditions for the bonds of the several series or divisions.

(2) It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the commission at or prior to the issue thereof.

(3) The commission may provide for successive issues or may provide for one maximum issue.

History: **En. Sec. 16, Ch. 223, L. 1951; R.C.M. 1947, 11-3716.**

7-14-4647. Interest on revenue bonds. Revenue bonds shall bear interest, payable annually or semiannually or in part annually and in part semiannually. Prior to the issuance of bonds, the commission may fix limitations or restrictions on the payment of interest.

History: **En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).**

7-14-4648. Payment of principal and interest. The commission may provide for the payment of the principal and interest of bonds at any place within or without the state in specified coin or currency of the United States.

History: **En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).**

7-14-4649. Maturity dates of revenue bonds. (1) Bonds may be serial bonds or sinking fund bonds, with such maturities as the commission may determine.

(2) Bonds shall bear dates prescribed by the commission. No bond by its terms shall mature in more than 40 years from its own date, and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

History: **En. Sec. 19, Ch. 223, L. 1951; R.C.M. 1947, 11-3719.**

7-14-4650. Signatures on bonds. All of the signatures on said bonds and on the interest coupons thereof may be printed, lithographed, or engraved facsimiles except one signature of an officer of the city or commission or a representative of the trustee, which shall be manually affixed. If any of the officers whose signatures appear upon the bonds or coupons cease to be officers before delivery of the bonds or coupons, their signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

History: **En. Sec. 18, Ch. 223, L. 1951; amd. Sec. 7, Ch. 401, L. 1973; R.C.M. 1947, 11-3718.**

7-14-4651. Redemption of revenue bonds. Bonds may be callable upon such terms and conditions, upon such notice as the commission may determine, and upon the payment of the premium fixed by the commission in the proceedings for the issuance of the bonds. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond.

History: **En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).**

7-14-4652. Details relating to sale of revenue bonds. (1) The commission may fix terms and conditions for the public or private sale or other disposition of any authorized issue of bonds. The commission may sell bonds at not less than 95% of their par or face value.

(2) Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction, or completion of which the bonds have been issued and for a period of not to exceed 2 years thereafter, as provided for in the indenture.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4653. Temporary or interim bonds. Pending the actual issuance or delivery of revenue bonds, the commission may issue temporary or interim bonds, certificates, or receipts of any denomination whatsoever, with or without coupons, to be exchanged for definitive bonds when ready for delivery or to be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4654. Exemption from certain state taxes. All such revenue bonds and the interest or income therefrom are exempt from all taxation in this state, other than gift, inheritance, and estate taxes.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4655. Authorization to enter into indentures. (1) The commission may enter into indentures providing for the aggregate principal amount, date or dates, maturities, interest rate, denominations, form, registration, transfer, and interchange of such bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded, and refunded.

(2) Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to and is bound by all of the provisions of the indenture to the extent that such provisions do not conflict with provisions stated in the bonds.

(3) Reference on the face of the bonds to such indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons.

History: En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963; R.C.M. 1947, 11-3714(part).

7-14-4656. Contents of indenture. (1) An indenture pursuant to which bonds are issued may include such covenants and agreements on the part of the commission as the commission deems necessary or advisable for the better security of the bonds issued thereunder.

(2) An indenture may include any or all the following clauses relating to the bonds issued thereunder:

(a) requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates, at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture;

(b) requiring the commission to make all repairs, renewals, and replacements necessary to the operation of the project and to keep it at all times in good repair;

(c) requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights;

(d) requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials, and supplies or other charges which if unpaid might become a lien or charge upon the revenues or any part thereof of any project acquired, constructed, or completed from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds;

(e) limiting, restricting, or prohibiting any right, power, or privilege of the commission to mortgage or otherwise encumber, sell, lease, or dispose of any project constructed from the proceeds of the bonds or from other proceeds or to enter into any lease or agreement which impairs or impedes the operation of such project or any part thereof necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues;

(f) requiring the commission to fix, prescribe, and collect fees, tolls, rentals, or other charges in connection with the services and facilities furnished from the project acquired, constructed, or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses of operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking fund, reserve fund, or other special fund provided for the further security of such bonds or as a depreciation charge or other charge in connection with such project;

(g) requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon or to any reserve or other fund created for the further protection of the bonds and to apply such revenues or cause them to be applied only as provided in the indenture;

(h) limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof or more than one of such projects;

(i) limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing, or completing any improvement or any part thereof;

(j) requiring, specifying, or limiting the kind, amount, and character of insurance to be maintained by the commission on any project or any part thereof and the use and disposition of the proceeds of any such insurance thereafter collected;

(k) providing the events of default and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity and the terms and conditions upon which such declaration and its consequences may be waived;

(l) designating the rights, limitations, powers, and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture;

(m) prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding;

(n) providing for such other acts and matters as may be necessary or convenient or desirable in order to secure the bonds or to make the bonds more marketable.

History: (1), (2)(a) thru (2)(m)En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 164, L. 1963; Sec. 11-3714, R.C.M. 1947; (2)(n)En. Sec. 15, Ch. 223, L. 1951; Sec. 11-3715, R.C.M. 1947; R.C.M. 1947, 11-3714(part), 11-3715(part).

7-14-4657. Special provisions relating to indenture clause dealing with amendment and modification. (1) With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission; by any department, political subdivision, or agency of the state; or by any public corporation, municipality, district, or political subdivision shall not be counted as outstanding bonds or be entitled to vote or assent but shall, nevertheless, be subject to any such modification or amendment.

(2) Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

History: En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963; R.C.M. 1947, 11-3714(part).

7-14-4658. Incorporation by reference of indenture in all contracts. Every contract entered into by the commission for the use of any project or the services or facilities thereof acquired, constructed, or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any indenture pursuant to which the bonds were issued.

History: En. Sec. 23, Ch. 223, L. 1951; amd. Sec. 9, Ch. 401, L. 1973; R.C.M. 1947, 11-3723(part).

7-14-4659. Funding and refunding bonds authorized. (1) The commission may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any revenue bonds issued by the commission. Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby and, in addition, for the payment of all expenses incident to the calling, retiring, or paying of such outstanding bonds and the issuance of such funding or refunding bonds.

(2) All provisions of this part applicable to the issuance of revenue bonds are applicable to the funding or refunding bonds and to the issuance, sale, or exchange thereof.

History: Ap. p. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; Sec. 11-3720, R.C.M. 1947; Ap. p. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; Sec. 11-3721, R.C.M. 1947; R.C.M. 1947, 11-3720(part), 11-3721(part).

7-14-4660. Expenses which may be paid by means of funding or refunding bonds. The expenses referred to in 7-14-4659(1) include:

(1) the difference in amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold;

(2) any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof; and

(3) the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement.

History: En. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; R.C.M. 1947, 11-3721(part).

7-14-4661. Bonds to be negotiable. All bonds issued under the provisions of this part shall be fully negotiable as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; R.C.M. 1947, 11-3721(part).

7-14-4662. Bonds as legal investments. All bonds issued under this part shall be legal investments for both public and private funds.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4663. Authorization to designate trustee for bondholders. The commission may designate a bank or trust company as a trustee for the holders of bonds issued hereunder, may authorize the trustee to act on behalf of the holders of the bonds and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders, and may fix and determine the conditions upon which any trustee shall receive, hold, or disburse any or all revenues collected for or on account of the bondholders. The authority may prescribe the duties and powers of such trustee with respect to the payment of principal and interest on the bonds, the redemption of the bonds, the registration and discharge from registration of the bonds, and the management of any sinking fund or other funds provided as security for the bonds.

History: En. Sec. 15, Ch. 223, L. 1951; R.C.M. 1947, 11-3715(part).

7-14-4664. Rights of obligees. (1) An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) by mandamus, suit, action, or proceeding at law or in equity to compel said commission and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said commission with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this part;

(b) by suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of said commission.

(2) A commission shall have power by its resolution, trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds the right (in addition to all rights that may otherwise be conferred), upon the happening of an event or default as defined in such resolution or instrument, by suit, action, or proceeding in any court of competent jurisdiction:

(a) to cause possession of any parking facility or any part thereof to be surrendered to any such obligee;

(b) to obtain the appointment of a receiver of any parking facility of said commission or any part thereof and of the rents and profits therefrom;

(c) to require said commission and the members and employees thereof to account as if it and they were the trustees of an express trust.

History: (1)En. Sec. 23, Ch. 223, L. 1951; amd. Sec. 9, Ch. 401, L. 1973; Sec. 11-3723, R.C.M. 1947; (2)En. Sec. 24, Ch. 223, L. 1951; Sec. 11-3724, R.C.M. 1947; R.C.M. 1947, 11-3723(part), 11-3724(part).

7-14-4665. Role of appointed receiver. If a receiver is appointed pursuant to 7-14-4664(2)(b), he may enter and take possession of such parking facility or any part thereof and operate and maintain the same and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom. The receiver shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct.

History: En. Sec. 24, Ch. 223, L. 1951; R.C.M. 1947, 11-3724(part).

7-14-4666. Exemption from execution for property of parking commission — exception. (1) Except as provided in subsection (2), all real property of a commission shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall any judgment against a commission be a charge or lien upon its real property.

(2) The provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance of a commission or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by a commission on its rents, fees, or revenues.

History: En. Sec. 25, Ch. 223, L. 1951; R.C.M. 1947, 11-3725.

Part 47

Pedestrian Malls and Offstreet Parking Facilities

7-14-4701. Authority to establish pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may establish pedestrian malls.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4702. Control of traffic on pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may prohibit, in whole or in part, vehicular traffic on a pedestrian mall.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4703. Provision for payment of damages due to creation of pedestrian mall. When the public interest or convenience requires, the governing body of a municipality may pay, from general funds of the municipality or other available money or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall. The resolution of intention must contain a statement that an assessment will be levied to pay the whole or a stated portion of such damages, if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4704. Construction of improvements related to pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may construct improvements on public streets that have been or will be established as a pedestrian mall, including but not limited to paving, sidewalks, curbs, sewers, covered walkways or areas, air conditioning, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, statuary, fountains, decorative structures, benches, restrooms, child care facilities, display facilities, information booths, public assembly facilities, and other structures, works, or improvements necessary or convenient to serve members of the public using such pedestrian mall, including the reconstruction or relocation of existing municipally owned works, improvements, or facilities on such streets. The improvements or structures may be attached to abutting private buildings or structures provided that the improvements or structures are located on public property.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4705 through 7-14-4710 reserved.

7-14-4711. Authorization for improvement districts for pedestrian malls, offstreet parking, parkings, and parkways. (1) An improvement district may be formed for the sole purpose of operating, maintaining, repairing, and improving pedestrian malls, offstreet parking facilities, and parkings and parkways.

(2) Subject to the powers granted and the limitations contained in this part, the powers and duties of the municipality and the procedure to be followed are as provided in parts 41 through 44 of chapter 12 for other types of special improvement districts.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(3), (4).

7-14-4712. Procedure upon receipt of petition from all property owners within proposed district. If a petition for the formation of an improvement district under the provisions of 7-14-4711 is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of the fact, shall adopt a resolution of intention to order the improvement as provided in 7-12-4104, and 7-12-4117 and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to the following provisions without the necessity of the publication and posting of the resolution of intention provided for in 7-12-4106.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(5).

7-14-4713. Estimates of expenses — tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district which shall be provided for by the levy and collection of ad valorem taxes upon the taxable value of all the real and personal property in the district;

(b) publish notice thereof; and

(c) have hearings on the statements and estimates and adopt them as provided for incorporated cities and towns by 7-12-4104, 7-12-4106, 7-12-4110, 7-12-4112, 7-12-4113, and 7-12-4117.

(2) The governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, shall be applicable to the district taxes provided for under this section.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(6).

7-14-4714. Manner of financing district for pedestrian mall or offstreet parking. An improvement district formed for the purpose of establishing a pedestrian mall or offstreet parking may be financed in accordance with the provisions of 7-12-4161 through 7-12-4168, 7-12-4173, and 7-12-4175 and in accordance with the methods of financing set forth for the construction of water or sewer systems as set forth in 7-13-4321 through 7-13-4324, 7-13-4328, 7-13-4329, and 7-13-4341 through 7-13-4345.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(7).

7-14-4715. Authorization for issuance of bonds by improvement districts for pedestrian malls or offstreet parking. An improvement district formed for pedestrian malls or offstreet parking shall be authorized to issue improvement bonds.

History: En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.1(part).

7-14-4716. Procedure to issue bonds. (1) When the governing body determines that improvement bonds are to be issued, it shall so declare in the resolution of intention for the work and shall specify the rate of interest which the bonds will bear. A description of the bonds, including the manner of repayment, shall be inserted in all notices of the proceedings required to be published or posted. A like description of the bonds shall be included in the warrant.

(2) All other proceedings for the work up to and including the approval of the assessment by the governing body and including delivery of the assessment to the contractor, demand of payment of the several assessments, and the return and record thereof shall be in all respects as provided in this part and parts 41 and 42 of chapter 12.

History: En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.1(a), (b); amd. Sec. 13, Ch. 253, L. 1979.

7-14-4717. List of unpaid assessments. After expiration of the prescribed time from the date of the warrant and after the treasurer has recorded the return, he shall make and certify to the clerk a complete list of all unpaid assessments which amount to $25 or over upon any assessment.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(a).

7-14-4718. Removal of property from list. (1) If any person before certification of the list to the clerk presents to the treasurer his affidavit that he is the owner of a lot in the list, accompanied by the certificate of a searcher of records that the person is the owner of record, and notifies the treasurer in writing that he desires no bond to be issued for the assessment upon the lot, then the assessment shall not be included in the list and shall remain collectable as provided by this part and parts 41 and 42 of chapter 12.

(2) Omission to file the notice shall bar any defense against the bonds except the defense that the governing body did not have authority to issue the bonds.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(b).

7-14-4719. Presentation of list to governing body — issuance of bonds. The clerk shall present the list to the governing body at its next meeting, and the body shall thereupon by resolution direct improvement bonds to be issued to the contractor for the amount of the assessments remaining unpaid, prescribing the number and denomination of the bonds and the times when payable. The resolution shall also fix the place, if any, other than the office of the treasurer at which the bonds and the interest thereon shall be payable.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(part).

7-14-4720. Details of bonds. (1) The number and denomination of the bonds and the times when payable shall be fixed so that an approximately equal amount of the total sum shall be paid each year until the whole amount is paid, not exceeding 25 years and 3 months from the date of the bonds, but any fractional amounts may be added to the amount due in any year so that the amounts due in all other years shall be in equal multiples of $100 each. Except for a bond to represent any odd amount due in any year, the denominations of the bonds shall be fixed at $100 or some multiple thereof not exceeding $1,000.

(2) The bonds shall be issued as of the date of the warrant and shall bear interest from such date at the rate specified in the resolution of intention. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may be, occurring 90 days after the date of the bond and shall be for the interest accrued at that time.

(3) The due date of all bonds shall be January 1 in the years in which they respectively become due.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(part).

7-14-4721. Assessments converted to bond liability. (1) The treasurer, at the time he certifies the list of unpaid assessments to the clerk, shall write the word "certified" on the record of the assessment opposite each assessment included in the list, and thereupon all assessments of $25 or over shall cease to be payable in cash and shall thereafter be payable only in equal annual installments on December 1 in each year preceding January 1 on which the bonds become due. The governing body may provide a plan whereby the annual installment may be collected in partial payments prior to the time the installment is due, and the lien of each assessment on the property assessed shall continue and remain in full force and effect for 2 years after the last installment on the assessment becomes due or until the assessment is fully paid.

(2) The number of installments in which the assessment is payable shall correspond to the number of years in which there are bonds to be paid, but the total number of installments shall not exceed 25.

History: En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(a), (c).

7-14-4722. Treatment of installments due on bonds. (1) An uncollected installment shall be added to the succeeding installment and, together with interest and penalties, shall be payable therewith.

(2) All assessments of $25 or more not paid before the certification of assessments unpaid to the clerk shall bear interest from the date of the warrant at the same rate as that specified for the bonds in the resolution of intention. The interest shall be payable on June 1 and December 1 of each year immediately before the interest becomes due on the bonds, but the governing body may provide a plan whereby the interest may be collected in partial payments prior to the date it becomes due.

History: En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(b), (d).

7-14-4723. Advance payment of installments. The governing body may provide for receiving payment of the installments of the assessment before they become due and using the proceeds thereof in redeeming such bonds as may be presented for redemption by the owners thereof or for investing the proceeds in improvement bonds for other work or other satisfactory investment, but no investment of such funds shall be made so as to prejudice the prompt payment of the bonds on the date they become due.

History: En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(e).

7-14-4724 through 7-14-4730 reserved.

7-14-4731. Authorization for improvement districts to lease and operate offstreet parking facilities. (1) In addition to the purposes for which an improvement district may be formed under the provisions of 7-12-4301, 7-14-4701, and 7-14-4711, an improvement district may be formed for the sole purpose of leasing real property to be used as offstreet parking sites; for the improvement of such offstreet parking sites by grading, paving, ordering the installation of lighting poles, wires, conduits, lamps, standards, and other appliances for the purpose of lighting and beautifying the offstreet parking areas and entrances thereto; and for the operation and maintenance thereof.

(2) Subject to the powers granted and the limitations contained in this section, 7-12-4131, 7-12-4301(2), 7-12-4327, 7-14-4701 through 7-14-4704, 7-14-4711 through 7-14-4714, and 7-14-4733 through 7-14-4737, the powers and duties of the governing body of the municipality and the procedure to be followed shall be as provided in parts 41 and 42 of chapter 12 for other types of special improvement districts.

(3) No improvement district formed under provisions of this section shall be authorized to engage in any activity other than the leasing of offstreet parking sites and the improvement, operation, and maintenance of same.

(4) The formation of an improvement district for offstreet parking purposes under the provisions of this section shall not prevent the subsequent establishment of improvement districts for any other purpose authorized by law.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).

7-14-4732. Procedure upon receipt of petition for creation of offstreet parking district. (1) If a petition for the formation of an improvement district for the leasing, improvement, or operation and maintenance of an offstreet parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of 7-12-4104 and 7-12-4117 and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to provisions of 7-12-4114 without the necessity of the publication and posting of the resolution of intention provided for in 7-12-4106.

(2) If a petition for the formation of an improvement district for offstreet parking purposes and for the leasing of sites and improvement, operation, and maintenance thereof is presented to the governing body signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district, the governing body shall adopt a resolution of intention ordering the proposed improvement and cause same to be published and posted pursuant to the provisions of 7-12-4104 and 7-12-4106.

History: En. 11-2214.5 by Sec. 6, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.5.

7-14-4733. Authority to enter lease agreements. (1) After the formation of a special improvement district pursuant to the provisions of

7-12-4104 and 7-12-4106 as modified in 7-14-4732 and after having acquired jurisdiction to order the improvement pursuant to 7-12-4114, the governing body may:

(a) in addition to ordering the improvements set forth in 7-14-4731(1), enter into lease agreements for property within the limits of the assessment district for use as offstreet parking sites, which lease agreements shall be upon such terms and conditions as the governing body may determine and which lease agreements may provide that same may be terminated by either party upon 6 months' prior written notice; and

(b) contract for the operation and maintenance thereof.

(2) The governing body may enter into such lease agreements and contract for the operation and maintenance of such offstreet parking sites without the publication of notice and invitation for bids.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(c).**

7-14-4734. Expense estimate — assessments and tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district which shall be provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district;

(b) publish notice thereof; and

(c) have hearings thereon and adopt an ordinance thereon at the times and in the manner provided for incorporated cities and towns by the applicable portions of 7-12-4175.

(2) The governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the district taxes provided for under this section.

(3) No assessment for district purposes against the property within such district may exceed 12 mills upon each dollar of taxable valuation in any tax year.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part); amd. Sec. 14, Ch. 253, L. 1979.**

7-14-4735. Prohibition on issuance of improvement bonds. An improvement district formed under provisions of 7-14-4731 shall not be authorized to issue improvement bonds.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).**

7-14-4736. Participation by municipality. If the municipality is willing to participate in the cost of leasing, improving, operating, or maintaining the offstreet parking sites in an improvement district established pursuant to 7-14-4731, the governing body may by resolution summarily order such participation, and the amount of any such participation shall not be subject to the limitations of 7-12-4102, 7-12-4103, and 7-12-4132.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).**

7-14-4737. Deletion of territory from offstreet parking district. If in the opinion of the governing body any portion of the territory of a district formed under 7-14-4731 is no longer benefited by the offstreet parking sites provided, the governing body may by resolution summarily delete from the district formed under 7-14-4731 any such area and may form a new district from the balance of the original district formed under 7-14-4731.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(h).

Part 48

Air Transportation

7-14-4801. Acquisition of landing fields and parking areas for aircraft. The city or town council has power to acquire by lease, gift, purchase, or condemnation lots or lands for landing fields or parking areas for aircraft, within or without the corporate limits of the municipality, and to exercise municipal jurisdiction over the lots or lands, where such lots or lands or any portion thereof are without the corporate limits of the municipality, to the same extent as though they were within such corporate limits.

History: En. Subd. 84, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.83, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1947; amd. Sec. 1, Ch. 27, L. 1965; R.C.M. 1947, 11-986(part).

CHAPTER 15

HOUSING AND CONSTRUCTION

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Parts 1 through 20 reserved

Part 21

County Housing Authorities

7-15-2101. Findings and policy. It is hereby declared that:

(1) unsanitary or unsafe dwelling accommodations exist in rural areas throughout the state, and such unsafe or unsanitary conditions arise from

overcrowding and concentration of population, the obsolete and poor conditions of buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(2) in such rural areas, many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations;

(3) in such rural areas, there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof, and consequently, many persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(4) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values;

(5) these conditions cannot be remedied by the ordinary operations of private enterprise;

(6) the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired;

(7) it is in the public interest that work on such projects be instituted as soon as possible; and

(8) the necessity for the provisions hereinafter enacted is hereby declared, as a matter of legislative determination, to be in the public interest.

History: En. Sec. 2, Ch. 140, L. 1935; re-en. Sec. 5309.2, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1941; R.C.M. 1947, 35-102(part).

7-15-2102. Petition to create county housing authority — hearing and notice. (1) Any 25 residents of a county may file a petition with the county clerk setting forth that there is a need for a housing authority to function in the county.

(2) Upon the filing of such a petition, the county clerk shall give notice of the time, place, and purpose of a public hearing at which the board of county commissioners will determine the need for an authority in the county.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2103. Notice of hearing on petition. The notice required by 7-15-2102 shall be given at the county's expense by publishing a notice at least 10 days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the county or, if there be no such newspaper, by posting such a notice in at least three public places within the county at least 10 days preceding the day on which the hearing is to be held.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2104. Hearing on petition. Upon the date fixed for said hearing held upon notice as provided in 7-15-2102 and 7-15-2103, an opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2105. Decision of board of county commissioners. (1) After such a hearing, the board of county commissioners shall determine:

(a) whether unsanitary or unsafe inhabited dwelling accommodations exist in the county; and/or

(b) whether there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof.

(2) If it shall determine that either or both of the above-enumerated conditions exist, the board shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority.

(3) If the board, after a hearing as aforesaid, shall determine that neither of the above-enumerated conditions exist, it shall adopt a resolution denying the petition. After 3 months shall have expired from the date of the denial of any such petition, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2106. Criteria for determining if unsafe or unsanitary dwelling accommodations exist. In determining whether dwelling accommodations are unsafe or unsanitary, the board of county commissioners shall take into consideration the following:

(1) the physical condition and age of the buildings;

(2) the degree of overcrowding;

(3) the percentage of land coverage;

(4) the light and air available to the inhabitants of such dwelling accommodations;

(5) the size and arrangement of the rooms;

(6) the sanitary facilities; and

(7) the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2107. Application for incorporation. (1) The commissioners of the authority shall present to the secretary of state an application signed by them which shall set forth (without any detail other than the mere recital):

(a) that a notice has been given and public hearing has been held as aforesaid and that the board of county commissioners made the aforesaid determination after such hearing and appointed them as commissioners;

(b) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;

(d) the name which is proposed for the corporation; and

(e) the location of the principal office of the proposed corporation.

(2) The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows

the commissioners and knows them to be the officers as asserted in the application and that each subscribed and swore thereto in the officer's presence.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2108. Processing of application by secretary of state. (1) The secretary of state shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the same with the application.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2109. Effect of filing and recording application. When the application has been made, filed, and recorded as provided in 7-15-2107 and 7-15-2108, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2110. Presumption of regularity in creation of county housing authority. (1) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part upon proof of the issuance of the aforesaid certificate by the secretary of state.

(2) A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(7).

7-15-2111. Area of operation of county housing authority — inclusion of municipalities. (1) The area of operation of such authority shall include said county, but in no event shall it include any city unless a resolution shall have been adopted by the governing body of the city (and by any authority which shall have been theretofore established and authorized to exercise its powers in the city) declaring that there is need for the county authority to exercise its powers within that city. Such resolution shall not be effective until it has been approved by a majority vote of the electors within the corporate limits of such city or town voting at either a special or general election.

(2) If, after the adoption of such resolution or resolutions, an authority is established for any city within the county, the county authority shall have no power to initiate any further housing projects within such city without the

consent by resolution of the governing body thereof and of the authority established for such city.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2112. Administration and operation of county housing authority — application of municipal laws. (1) The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor.

(2) Except as otherwise provided in this part, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties, and limitations provided for housing authorities created for cities and the commissioners of such housing authorities, and for such purposes, unless a different meaning clearly appears from the context:

(a) the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners";

(b) the term "city clerk" as used therein shall be construed as meaning "county clerk";

(c) the term "city" as used therein shall be construed as meaning "county"; and

(d) the term "ordinance" shall be construed as meaning "resolution".

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27B, R.C.M. 1935; amd. Sec. 2, Ch. 281, L. 1971; amd. Sec. 2, Ch. 259, L. 1974; R.C.M. 1947, 35-129.

7-15-2113. County housing authority to be nonprofit. It is hereby declared to be the policy of this state that:

(1) each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations; and

(2) no housing authority shall construct or operate any such project for profit or as a source of revenue to the county.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27F, R.C.M. 1935; R.C.M. 1947, 35-133(part).

7-15-2114. Certain laws controlling. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part are controlling.

History: En. Sec. 7, Ch. 153, L. 1941; R.C.M. 1947, 35-134; amd. Sec. 15, Ch. 253, L. 1979.

7-15-2115. Authorization for payment of rentals in lieu of taxes. (1) Any housing authority established pursuant to this part and/or the federal government may pay annual sums from rentals in lieu of taxes to any state and/or political subdivision thereof with respect to any real property, including improvements thereon, owned or held by either such housing authority or the federal government.

(2) The amount so paid for any year upon such property shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the

case may be, upon such property if it were not exempt from taxation, with such allowances as may be considered to be appropriate for expenditures by the government for streets, utilities, or other public services to serve such property.

History: En. Sec. 4, Ch. 215, L. 1943; R.C.M. 1947, 35-304.

7-15-2116 through 7-15-2120 reserved.

7-15-2121. Authorization for rural housing projects. Housing authorities created for counties are specifically empowered and authorized to borrow money, accept grants, and exercise their other powers to provide housing for farmers of low income.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27C, R.C.M. 1935; R.C.M. 1947, 35-130(part).

7-15-2122. Operation of rural housing projects. (1) In connection with the projects authorized by 7-15-2121, such housing authorities may enter into such leases or purchase agreements, accept such conveyances, and rent or sell dwellings forming part of such projects to or for farmers of low income as such housing authority deems necessary in order to assure the achievement of the objectives of this part.

(2) Such leases, agreements, or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of lands described in any such instrument. The covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate.

(3) Nothing contained in this section and 7-15-2121 shall be construed as limiting any other powers of any housing authority, except that no more than 2 acres of land per dwelling, together with the dwelling houses thereon provided for under the provisions of this part, shall be exempt from taxation and that upon title to said 2 acres of land and the dwelling houses thereon passing to private ownership, the said land and the dwelling houses thereon shall be restored to the tax rolls and be subject to taxation.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27C, R.C.M. 1935; R.C.M. 1947, 35-130(part).

7-15-2123. Housing applications by farmers. (1) The owner of any farm operated or worked upon by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income.

(2) Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27D, R.C.M. 1935; R.C.M. 1947, 35-131.

7-15-2124. Definition of term farmers of low income. "Farmers of low income" shall mean persons or families who, at the time of their admission to occupancy in a dwelling of the authority:

(1) live under unsafe or unsanitary housing conditions;

(2) derive their principal income from operating or working upon a farm; and

(3) had an aggregate average annual net income for the 3 years preceding their admission that was less than the amount determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe, and sanitary housing without overcrowding.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27E, R.C.M. 1935; R.C.M. 1947, 35-132.

Parts 22 through 40 reserved

Part 41

General Provisions Related to Municipal Housing and Construction

7-15-4101. Numbering of houses and lots. The city or town council has power to regulate the numbering of houses and lots and to change the same.

History: En. Subd. 14, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.13, R.C.M. 1935; R.C.M. 1947, 11-916.

7-15-4102. Findings and policy with regard to unsanitary and unsafe private dwellings. (1) It is hereby declared that:

(a) unsanitary or unsafe privately owned dwelling accommodations exist in urban areas throughout the state, and these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, morals, and welfare of the citizens of the state and impair economic values;

(b) in many instances, the owners of such accommodations, due to poverty, unavailability of credit, and increased costs, are unable to finance the rehabilitation of their dwellings; and

(c) the municipal corporations of the state are uniquely able to render financial assistance to these owners of unsafe and unsanitary dwellings, and such assistance is a public use and purpose for which public money may be spent.

(2) The necessity for the provisions of 7-15-4103 is hereby declared, as a matter of legislative determination, to be in the public interest.

History: En. 11-1025 by Sec. 1, Ch. 131, L. 1975; R.C.M. 1947, 11-1025(1).

7-15-4103. Authorization for municipalities to furnish assistance in the rehabilitation of private dwellings. When it has determined that unsanitary or unsafe privately owned dwelling accommodations exist within the limits of the city or town and when it has further determined that the owners of such accommodations are unable under the prevailing market conditions to finance rehabilitation of their dwellings without assistance, the governing body of any municipal corporation:

(1) may finance the rehabilitation of such unsanitary or unsafe privately owned dwelling accommodations through the use of grants of funds or property, direct loans, loan guarantees, and other means;

(2) may apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government or the

state, county, or other public body or from any other public or private source for the purpose of this section and 7-15-4102; and

(3) may enter into and carry out contracts in connection therewith.

History: En. 11-1025 by Sec. 1, Ch. 131, L. 1975; R.C.M. 1947, 11-1025(2).

7-15-4104 through 7-15-4120 reserved.

7-15-4121. Adoption of building, electrical, and plumbing codes. The governing body of an incorporated city or town may adopt technical building, electrical, and plumbing codes, in whole or in part, by reference under the procedure provided in 7-5-4202.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(part).

7-15-4122. Construction specifications. The city or town council has power to:

(1) prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings; and

(2) order the construction of fire escapes thereon.

History: En. Subd. 51, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.50, R.C.M. 1935; R.C.M. 1947, 11-953.

7-15-4123. Inspection of building materials. The city or town council has power to provide for the inspection and measuring of lumber and other building materials.

History: En. Subd. 57, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.56, R.C.M. 1935; R.C.M. 1947, 11-959.

7-15-4124. Entrances and safety exits for buildings. The city or town council has power to:

(1) compel the owner of a building to erect fire escapes and proper exits and entrances when necessary for safety;

(2) regulate the construction of entrances of basements, cellars, and other floors to buildings from the sidewalks.

History: (1)En. Subd. 67, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.66, R.C.M. 1935; Sec. 11-969, R.C.M. 1947; (2)En. Subd. 70, Sec. 5039, R.C.M. 1921, amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.69, R.C.M. 1947; Sec. R.C.M. 1947, 11-969, 11-972(part).

7-15-4125. Repair of damaged structures. The city or town council has power to require the owner of a sidewalk, house, or other structure which is dangerous to passers-by to repair or remove the same after notice.

History: En. Subd. 72, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.71, R.C.M. 1935; R.C.M. 1947, 11-974.

7-15-4126. Regulation of partition fences and party walls. The city or town council has power to regulate partition fences and party walls not already constructed.

History: En. Subd. 50, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.49, R.C.M. 1935; R.C.M. 1947, 11-952.

Part 42

Urban Renewal

7-15-4201. Short title. This part and part 43 shall be known and may be cited as the "Urban Renewal Law".

History: En. Sec. 20, Ch. 195, L. 1959; R.C.M. 1947, 11-3920.

7-15-4202. Existence of blighted areas and resulting problems — statement of policy. It is hereby found and declared:

(1) that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state, exist in municipalities of the state;

(2) that the existence of such areas:

(a) contributes substantially and increasingly to the spread of disease and crime and depreciation of property values;

(b) constitutes an economic and social liability;

(c) substantially impairs or arrests the sound growth of municipalities;

(d) retards the provision of housing accommodations;

(e) aggravates traffic problems; and

(f) substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and

(3) that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

History: En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).

7-15-4203. Need for redevelopment and rehabilitation of blighted areas. It is further found and declared:

(1) that certain of such blighted areas or portions thereof may require acquisition, clearance, and disposition subject to use restrictions as provided in this part, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation;

(2) that other areas or portions thereof may, through the means provided in this part, be susceptible of rehabilitation in such a manner that the conditions and evils enumerated in 7-15-4202 may be eliminated, remedied, or prevented; and

(3) that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

History: En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).

7-15-4204. Interpretation. It is further found and declared:

(1) that the powers conferred by this part and part 43 are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and

(2) that the necessity in the public interest for the provisions enacted in this part and part 43 is hereby declared as a matter of legislative determination.

History: **En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).**

7-15-4205. Scope. Insofar as the provisions of this part and part 43 are inconsistent with the provisions of any other law, the provisions of this part and part 43 shall be controlling. The powers conferred by this part and part 43 shall be in addition and supplemental to the powers conferred by any other law.

History: **En. Sec. 19, Ch. 195, L. 1959; R.C.M. 1947, 11-3919(part).**

7-15-4206. Definitions. The following terms, wherever used or referred to in this part or part 43, shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" shall mean a public agency created by 7-15-4232.

(2) "Blighted area" shall mean an area which is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodations; or constitutes an economic or social liability and/or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

(a) the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; and/or age obsolescence of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

(k) tax or special assessment delinquency exceeding the fair value of the land;

(l) defective or unusual conditions of title;

(m) improper subdivision or obsolete platting;

(n) the existence of conditions which endanger life or property by fire or other causes; or

(o) any combination of such factors.

(3) "Bonds" shall mean any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(4) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(5) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(6) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(7) "Mayor" shall mean the chief executive of a city or town.

(8) "Municipality" shall mean any incorporated city or town in the state.

(9) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality shall elect to undertake activities on an annual increment basis.

(10) "Obligee" shall include any bondholder or agent or trustee for any bondholder or lessor demising to the municipality property used in connection with an urban renewal project or any assignee or assignees of such lessor's interest or any part thereof and the federal government when it is a party to any contract with the municipality.

(11) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(12) "Public body" shall mean the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(13) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(14) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith and every estate, interest, right, and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise.

(15) "Redevelopment" may include:

(a) acquisition of a blighted area or portion thereof;

(b) demolition and removal of buildings and improvements;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(16) "Rehabilitation" may include the restoration and renewal of a blighted area or portion thereof in accordance with an urban renewal plan by:

(a) carrying out plans for a program of voluntary or compulsory repair and rehabilition of buildings or other improvements;

(b) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary, or unsafe conditions; lessen density; reduce traffic hazards; eliminate obsolete or other uses detrimental to the public welfare; to otherwise remove or prevent the spread of blight or deterioration; or to provide land for needed public facilities;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

(d) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with such urban renewal plan.

(17) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.

(18) "Urban renewal plan" means a plan, as it exists from time to time, for one or more urban renewal areas or for an urban renewal project, which plan:

(a) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and

(b) shall be sufficiently complete to indicate, on a yearly basis or otherwise:

(i) such land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation as may be proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(19) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.

History: En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969; R.C.M. 1947, 11-3901(part).

7-15-4207. Prohibition against discrimination. For all of the purposes of this part and part 43, no person may be subjected to discrimination because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin.

History: En. Sec. 17, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1977; R.C.M. 1947, 11-3917; amd. Sec. 16, Ch. 253, L. 1979.

7-15-4208. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this part and part 43, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this part and part 43, including the formulation of a workable program; the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality); the exercise of its zoning powers; the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements; the disposition of any property acquired; and the provision of necessary public improvements.

History: En. Sec. 3, Ch. 195, L. 1959; R.C.M. 1947, 11-3903.

7-15-4209. Development of workable urban renewal program. (1) A municipality, for the purposes of this part and part 43, may formulate a workable program for utilizing appropriate private and public resources:

(a) to eliminate and prevent the development or spread of blighted areas;

(b) to encourage needed urban rehabilitation;

(c) to provide for the redevelopment of such areas; or

(d) to undertake such of the aforesaid activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program.

(2) Such workable program may include, without limitation, provision for:

(a) the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards;

(b) the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds, and other public improvements; by encouraging voluntary rehabilitation; and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and

(c) the clearance and redevelopment of blighted areas or portions thereof.

History: En. Sec. 4, Ch. 195, L. 1959; R.C.M. 1947, 11-3904.

7-15-4210. Resolution of necessity required to utilize provisions of part. No municipality shall exercise any of the powers hereafter conferred upon municipalities by this part and part 43 until after its local governing body shall have adopted a resolution finding that:

(1) one or more blighted areas exist in such municipality; and

(2) the rehabilitation, redevelopment, or a combination thereof of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality.

History: En. Sec. 5, Ch. 195, L. 1959; amd. Sec. 1, Ch. 38, L. 1965; R.C.M. 1947, 11-3905.

7-15-4211. Preparation of comprehensive development plan for municipality. For the purpose of approving an urban renewal plan and other municipal purposes, authority is hereby vested in every municipality:

(1) to prepare, to adopt, and to revise from time to time a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings);

(2) to establish and maintain a planning commission for such purpose and related municipal planning activities; and

(3) to make available and appropriate necessary funds therefor.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

7-15-4212. Preparation of urban renewal plan. The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

7-15-4213. Review of urban renewal plan by planning commission. (1) Prior to its approval of an urban renewal project, the local governing body shall submit the urban renewal project plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole.

(2) The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within 60 days after receipt of it.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

7-15-4214. Hearing on urban renewal plan required. (1) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof.

(2) Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said 60 days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

7-15-4215. Notice of hearing on urban renewal plan. (1) The notice required by 7-15-4214(1) shall be given by publication once each week for 2 consecutive weeks, not less than 10 or more than 30 days prior to the date of the hearing, in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing, not less than 10 days prior to the date of the hearing, to the persons whose names appear on the county treasurer's tax roll as the owners or reputed owners of the property, at the address shown on the tax roll.

(2) The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

7-15-4216. Requirements for approval of urban renewal plans and projects. (1) The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared.

(2) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has by resolution determined such area to be a blighted area and designated such area as appropriate for an urban renewal project.

(3) An urban renewal plan adopted after July 1, 1979, must be approved by ordinance.

(4) All urban renewal plans approved by resolution prior to May 8, 1979, are hereby validated.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 1, Ch. 667, L. 1979.

Compiler's Comments

Effective date. Sec. 13, Ch. 667, L. 1979, provided: "This act is effective on passage and approval." Approved May 8, 1979.

7-15-4217. Criteria for approval of urban renewal project. Following the hearing required by 7-15-4214, the local governing body may, by ordinance, approve an urban renewal project if it finds that:

(1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project;

(2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole;

(3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and

(4) a sound and adequate financial program exists for the financing of said project.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 2, Ch. 667, L. 1979.

7-15-4218. Voter approval of urban renewal plan required when general obligation bonds to be used. If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in 7-15-4302(1) or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of part 44 of chapter 7 or of part 43 of chapter 13, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality, in accordance with the provisions of [7-7-4221 through 7-7-4233], at the same election and shall be approved by a majority of those qualified electors voting on such question.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

Compiler's Comments

Commissioner correction. The bracketed references were repealed, either in part or in whole, by Sec. 407, Ch. 571, L. 1979. The brackets were added by the Code Commissioner, 1979. This section requires an amendment to provide proper referencing.

7-15-4219. Effect of approval of urban renewal project. Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(f).

7-15-4220. Use of neighborhood development program to implement urban renewal activities. (1) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with 7-15-4218.

(2) In the event of such election, the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with 7-15-4211 through 7-15-4221. Such activity year shall relate to the budget year of the municipality.

(3) Such activities need not be limited to contiguous areas. However, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by the municipality in accordance with this part. The yearly activities shall constitute a part of the urban renewal plan, and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously.

(4) Every municipality shall have all the power necessary or convenient to plan and undertake neighborhood development projects consisting of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this part and part 43 for carrying out and planning urban renewal projects.

History: (1), (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; (2)En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969; Sec. 11-3901, R.C.M. 1947; (4)En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; Sec. 11-3907, R.C.M. 1947; R.C.M. 1947, 11-3901(part), 11-3906(h), 11-3907(j).

7-15-4221. Modification of urban renewal project plan. (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser or his successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are hereby validated.

(4) A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;

(b) the procedure set forth in the plan.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(e); amd. Sec. 3, Ch. 667, L. 1979.

7-15-4222 through 7-15-4230 reserved.

7-15-4231. Exercise of powers related to urban renewal. A municipality may itself exercise its urban renewal project powers as herein defined or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency created by 7-15-4232 or a department or other officers of the municipality as they are authorized to exercise under this part and part 43.

History: En. Sec. 15, Ch. 195, L. 1959; R.C.M. 1947, 11-3915(a).

7-15-4232. Authorization to assign urban renewal powers to municipal departments or to create urban renewal agency. When a municipality has made the finding prescribed in 7-15-4210 and has elected to have the urban renewal project powers exercised as specified in 7-15-4233:

(1) such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate; or

(2) the legislative body of a city may create an urban renewal agency in such municipality, to be known as a public body corporate, to which such powers may be assigned.

History: En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(a).

7-15-4233. Powers which may be exercised by urban renewal agency or authorized department. (1) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(a) to formulate and coordinate a workable program as specified in 7-15-4209;

(b) to prepare urban renewal plans;

(c) to prepare recommended modifications to an urban renewal project plan;

(d) to undertake and carry out urban renewal projects as required by the local governing body;

(e) to make and execute contracts as specified in 7-15-4251, 7-15-4254, 7-15-4255, and 7-15-4281, with the exception of contracts for the purchase or sale of real or personal property;

(f) to disseminate blight clearance and urban renewal information;

(g) to exercise the powers prescribed by 7-15-4255, except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body;

(h) to enter any building or property in any urban renewal area in order to make surveys and appraisals in the manner specified in 7-15-4257;

(i) to improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area;

(j) to insure real or personal property as provided in 7-15-4258;

(k) to effectuate the plans provided for in 7-15-4254;

(l) to prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation;

(m) to prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

(n) to conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects;

(o) to negotiate for the acquisition of land;

(p) to study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto;

(q) to organize, coordinate, and direct the administration of the provisions of this part and part 43;

(r) to perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

(2) Any powers granted in this part or part 43 that are not included in subsection (1) as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

History: **En. Sec. 15, Ch. 195, L. 1959; R.C.M. 1947, 11-3915(b).**

7-15-4234. Urban renewal agency to be administered by appointed board of commissioners. (1) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which shall consist of five commissioners.

(2) The initial membership shall consist of one commissioner appointed for 1 year, one for 2 years, one for 3 years, and two for 4 years. Each appointment thereafter shall be for 4 years. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

(3) Each commissioner shall hold office until his successor has been appointed and has qualified.

(4) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(5) Any persons may be appointed as commissioners if they reside within the municipality.

(6) A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office.

History: **En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part).**

7-15-4235. Restrictions on agency commissioners holding other public office. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this part or part 43 shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or office.

History: **En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).**

7-15-4236. Conduct of business. The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present unless in any case the bylaws shall require a larger number.

History: **En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part).**

7-15-4237. Annual report. (1) An agency authorized to transact business and exercise powers under this part and part 43 shall file with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year.

(2) The report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of such calendar year.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

History: En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part).

7-15-4238. Employment of necessary staff. The urban renewal agency or department or officers exercising urban renewal project powers shall be supplied with the necessary technical experts and such other agents and employees, permanent and temporary, as are required.

History: En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 17, Ch. 253, L. 1979.

7-15-4239. Control of conflict of interest. (1) (a) No public official, no employee of a municipality or urban renewal agency, and no department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under 7-15-4231 shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project.

(b) Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body.

(2) If any such official or department or division head owns or controls or owned or controlled within 2 years prior to the date of hearing on the urban renewal project any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. Any such official or department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project powers by the municipality pursuant to the provisions of 7-15-4231.

History: En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).

7-15-4240. Misconduct in office. Any violation of the provisions of 7-15-4235 or 7-15-4239 shall consititute misconduct in office.

History: En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).

7-15-4241 through 7-15-4250 reserved.

7-15-4251. General powers of municipalities in connection with urban renewal. Every municipality shall have all the power necessary or convenient:

(1) to carry out and effectuate the purposes and provisions of this part and part 43;

(2) to undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this part and part 43, and to disseminate blight clearance and urban renewal information;

(3) to organize, coordinate, and direct, within the municipality, the administration of the provisions of this part and part 43 as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively;

(4) to exercise all or any part or combination of powers granted in this part or part 43.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4252. Prevention and elimination of urban blight. The municipality is authorized to develop, test, and report methods and techniques and carry out demonstrations and other activities for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of funds from the federal government for such purposes.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4253. Relocation of displaced families. Every municipality shall have power to prepare plans for the relocation of families displaced from an urban renewal area and to make relocation payments and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(g).

7-15-4254. Municipal power in the preparation of various plans. (1) Every municipality shall have power, within the municipality:

(a) to make or have made all plans necessary to the carrying out of the purposes of this part and to contract with any person, public or private, in making and carrying out such plans; and

(b) to adopt or approve, modify, and amend such plans.

(2) Such plans may include, without limitation:

(a) a comprehensive plan or parts thereof for the locality as a whole;

(b) urban renewal plans;

(c) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

(d) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and

(e) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4255. Authority to provide or contract for services related to urban renewal. (1) Every municipality shall have power to:

(a) provide or arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, or roads in connection with an urban renewal project;

(b) install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements.

(2) Every municipality shall have power to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards in the undertaking or carrying out of an urban renewal project and to include in any contract let in connection with such a project provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(b).

7-15-4256. Restriction on operation of certain utility services by municipality. Nothing in this part or part 43 shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines, or other public utility facilities, excepting waterlines and sewerlines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(l).

7-15-4257. Authority to enter private property. (1) Every municipality shall have power, within the municipality, to enter upon any building or property in any urban renewal area in order to make surveys and appraisals and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

(2) Such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4258. Acquisition and administration of real and personal property. (1) Every municipality shall have power to:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise any real property and such personal property as may be necessary for the administration of the provisions contained in this part and part 43, together with any improvements thereon;

(b) hold, improve, clear, or prepare for redevelopment any such property;

(c) dispose of any real property;

(d) insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance.

(2) However, no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

(3) A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217.

History: (1), (2)En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; Sec. 11-3907, R.C.M. 1947; (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; R.C.M. 1947, 11-3906(part), 11-3907(part).

7-15-4259. Exercise of power of eminent domain. (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for an urban renewal project under this part, a municipality shall have the right to acquire by condemnation any interest in real property which it may deem necessary for such purpose.

(2) Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use thereof.

History: En. Sec. 8, Ch. 195, L. 1959; R.C.M. 1947, 11-3908.

7-15-4260. Exemption from levy and sale for certain property. All property of a municipality, including funds, owned or held by it for the purposes of this part and part 43 shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this part or part 43 by a municipality on an urban renewal project or the rents, fees, grants, or revenues derived from these projects.

History: En. Sec. 12, Ch. 195, L. 1959; R.C.M. 1947, 11-3912(a); amd. Sec. 4, Ch. 667, L. 1979.

7-15-4261. Exemption from taxation for certain property. (1) The property of a municipality acquired or held for the purposes of this part is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof.

(2) Such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

History: En. Sec. 12, Ch. 195, L. 1959; R.C.M. 1947, 11-3912(b).

7-15-4262. Disposal of municipal property in urban renewal areas. (1) A municipality may:

(a) sell, lease, or otherwise transfer real property in an urban renewal area or any interest therein acquired by it for an urban renewal project for residential, recreational, commercial, industrial, or other uses or for public use and enter into contracts with respect thereto; or

(b) retain such property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan and subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this part.

(2) Such sale, lease, other transfer, or retention and any agreement relating thereto may be made only after the approval of the urban renewal plan by the local governing body.

(3) Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas.

(4) Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part).

7-15-4263. Procedure to dispose of property to private persons. (1) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable procedures as it shall prescribe or as provided in this section.

(2) (a) A municipality shall by public notice invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area or any part thereof.

(b) Such notice shall be by publication once each week for 3 consecutive weeks in a newspaper having a general circulation in the community prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of 7-15-4262 through 7-15-4266.

(c) Such notice shall identify the area or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice.

(3) The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out. The municipality may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this

part and part 43. Thereafter, the municipality may execute, in accordance with the provisions of 7-15-4262 and 7-15-4264, and deliver contracts, deeds, leases, and other instruments of transfer.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(b).

7-15-4264. Obligations of transferees of municipal property in urban renewal area. (1) The purchasers or lessees and their successors and assigns shall be obligated to devote real property transferred pursuant to 7-15-4262 only to the uses specified in the urban renewal plan and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan.

(2) The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon.

(3) The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the clerk and recorder or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part).

7-15-4265. Presumption of regularity in transfer of title. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this part or part 43 shall be conclusively presumed to have been executed in compliance with the provisions of this part and part 43 insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History: En. Sec. 14, Ch. 195, L. 1959; R.C.M. 1947, 11-3914.

7-15-4266. Temporary use of municipal property in urban renewal area. A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of 7-15-4262 and 7-15-4264, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. The municipality may, after a public hearing, extend the time for a period not to exceed 3 years.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(c).

7-15-4267. Cooperation by public bodies. (1) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this part or part 43, upon such terms, with or without consideration, as it may determine, may:

(a) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality;

(b) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(c) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan;

(d) lend, grant, or contribute funds to a municipality;

(e) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this part or part 43, including the furnishing of funds or other assistance in connection with an urban renewal project;

(f) cause to be furnished public buildings and public facilities, including parks; playgrounds; recreational, community, educational, water, sewer, or drainage facilities; or any other works which it is otherwise empowered to undertake;

(g) furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places;

(h) plan or replan or zone or rezone any part of the urban renewal area; and

(i) provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(2) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of 7-15-4263.

History: **En. Sec. 13, Ch. 195, L. 1959; R.C.M. 1947, 11-3913(a), (b).**

7-15-4268 through 7-14-4280 reserved.

7-15-4281. Financial authority in connection with urban renewal. (1) Every municipality shall have power to:

(a) borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government; from the state, a county, or any other public body; or from any sources, public or private, for the purposes of this part and enter into and carry out contracts in connection therewith;

(b) appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this part and in accordance with state law levy taxes and assessments for such purposes;

(c) invest any urban renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement in property or securities in which mutual savings banks may legally invest funds subject to their control;

(d) adopt, in accordance with state law, annual budgets for the operation of an urban renewal agency, department, or office vested with urban renewal project powers under 7-15-4231;

(e) enter, in accordance with state law, into agreements, which may extend over any period, with agencies or departments vested with urban renewal project powers under 7-15-4231 respecting action to be taken by such municipality pursuant to any of the powers granted by this part or part 43;

(f) close, vacate, plan, or replan streets; roads, sidewalks, ways, or other places and plan or replan, zone or rezone any part of the municipality in accordance with state law.

(2) A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this part and part 43.

History: **En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).**

7-15-4282. Authorization for tax increment financing. Any urban renewal plan, as defined in 7-15-4206, may contain a provision or be amended to contain a provision for the segregation and application of tax increments, as provided in 7-15-4282 through 7-15-4292.

History: **En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part).**

7-15-4283. Definitions related to tax increment financing. For purposes of 7-15-4282 through 7-15-4292, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of taxable property at any time, as calculated from the assessment roll last equalized.

(2) "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(3) "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area subject to taxation.

(4) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area or a part thereof is located against the incremental taxable value.

(5) "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4292.

(6) "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

(7) "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, which levies taxes against property within the urban renewal area.

History: **En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(2); amd. Sec. 5, Ch. 667, L. 1979.**

Compiler's Comments

Commissioner correction. In Ch. 667, L. 1979, the second reference in subsection (2) was erroneously to section 9 of the bill enacting Ch. 667. Section 9 amended section 7-15-4289, MCA. The Code Commissioner has inserted the correct reference (7-15-4293, section 12 of the bill). The error arose when the Legislature renumbered the bill sections but overlooked this reference in the course of enacting Ch. 667.

7-15-4284. Filing of tax increment provisions of urban renewal plan. (1) The clerk of the municipality shall file a certified copy of each urban renewal plan or amendment thereto containing a tax increment provision with the state, county, or city officers responsible for assessing and determining the taxable value of taxable property within the urban renewal area or any part thereof.

(2) A certified copy of the plan or amendment shall also be filed with the clerk or other appropriate officer of each of the affected taxing bodies.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part).

7-15-4285. Determination and report of original, actual, and incremental taxable values. The officer or officers responsible for assessing and determining the taxable value of the taxable property located within the urban renewal area shall, immediately upon receipt of the tax increment provision and each year thereafter, calculate and report to the municipality and to any other affected taxing body the base, actual, and incremental taxable values of such property.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 6, Ch. 667, L. 1979.

7-15-4286. Procedure to determine and disburse tax increment. (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision shall be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area and the base taxable value of all taxable property located within the urban renewal area. The mill rate so determined shall be levied against the sum of the actual taxable value of all taxable property located within as well as outside the urban renewal area.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the urban renewal area shall be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through 7-15-4292.

(b) The balance of the taxes collected in each year shall be paid to each of the taxing bodies as otherwise provided by law.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(4); amd. Sec. 7, Ch. 667, L. 1979.

7-15-4287. Provision for use of portion of tax increment. (1) At the time of adoption of a tax increment provision or at any time subsequent thereto, the governing body of the municipality may provide that a portion of the tax increment from the incremental taxable value shall be released from segregation by an adjustment of the base taxable value, provided that:

(a) all principal and interest then due on bonds for which the tax increment has been pledged has been fully paid; and

(b) the tax increment resulting from the smaller incremental value is determined by the governing body to be sufficient to pay all principal and interest due later on the bonds.

(2) The adjusted base value determined under subsection (1) shall be reported by the clerk to the officers and taxing bodies to which the increment provision is reported.

(3) Thereafter, the adjusted base value is used in determining the mill rates of affected taxing bodies unless the tax increment resulting from the adjustment is determined to be insufficient for this purpose. In this case, the governing body must reduce the base value to the amount originally determined or to a higher amount necessary to provide tax increments sufficient to pay all principal and interest due on the bonds.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(6); amd. Sec. 8, Ch. 667, L. 1979.

7-15-4288. Costs which may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants; and

(4) the acquisition, construction, and improvement of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, waterlines, waterways, public buildings, and other public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part).

7-15-4289. Use of tax increments for bond payments. The tax increment may be pledged to the payment of the principal of premiums, if any, and interest on bonds which the municipality may issue for the purpose of providing funds to pay such costs.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 9, Ch. 667, L. 1979.

7-15-4290. Use of property taxes for payment of bonds. (1) The tax increment may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4289. Any municipality issuing such bonds may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based.

(2) No property taxes, except the tax increment derived from property within the urban renewal area and tax collections used to pay for services provided to the municipality by an urban renewal project, may be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 10, Ch. 667, L. 1979.

7-15-4291. Agreements to remit unused portion of tax increments. The municipality may also enter into agreements with the other affected taxing bodies to remit to such taxing bodies any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 or pledged to the payment of the principal of premiums, if any, and interest on the bonds referred to in 7-15-4289.

History: **En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part).**

7-15-4292. Termination of tax increment financing. (1) The tax increment provision shall terminate upon the 10th year following its adoption or upon the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest thereon, whichever last occurs.

(2) Any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision shall be distributed among the various taxing bodies in proportion to their property tax revenues from the district.

(3) After termination of the tax increment provision, all taxes shall be levied upon the actual taxable value of the taxable property in the urban renewal area and shall be paid into the funds of the respective taxing bodies.

(4) No bonds with tax increment provisions for the repayment thereof may be issued subsequent to 10 years after April 29, 1977.

History: **En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(7).**

7-15-4293. Adjustment of base taxable value following change in statutes. If the base taxable value of an urban renewal area is affected after its original determination by a statutory change in the method of appraising property, the tax rate applied to it, or the tax exemption status of property, the governing body of the municipality may request the department of revenue or its agents to calculate the base taxable value as it would have been on the date of the original determination had the statutory changes been in effect on that date. The governing body may adjust the base taxable value to that value reported by the department of revenue, under the provisions of 7-15-4287.

History: **En. Sec. 12, Ch. 667, L. 1979.**

Compiler's Comments

Incorporation into Urban Renewal Law. This section was enacted without any codification instructions. The apparent intent of the Legislature was that it become part of the "Urban Renewal Law", Title 7, chapter 15, parts 42 and 43, and the Code Commissioner has codified it accordingly. See 1-11-103(4).

Part 43

Urban Renewal Continued

7-15-4301. Authorization to issue urban renewal bonds and refunding bonds. (1) A municipality shall have the power to:

(a) issue bonds from time to time in its discretion, to finance the undertaking of any urban renewal project under this part and part 42, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects; and

(b) issue refunding bonds for the payment or retirement of such bonds previously issued by it.

(2) Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects under this part and part 42, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through 7-15-4292. Payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects of the municipality under this part and part 42 or by a mortgage on all or part of any such projects.

(3) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 11, Ch. 667, L. 1979.**

7-15-4302. Authorization to issue general obligation bonds. (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project of a municipality, the municipality, in addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.

(2) Any bonds issued pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by this part and part 42 which are necessary or proper to complete the project in accordance with the approved plan and any modification thereof duly adopted by the local governing body.

History: **(1), (2)En. Sec. 13, Ch. 195, L. 1959; Sec. 11-3913, R.C.M. 1947; (3), (4)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; R.C.M. 1947, 11-3906(part), 11-3913(c); amd. Sec. 18, Ch. 253, L. 1979.**

7-15-4303. Bonds to be fully negotiable. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this part and part 42 shall be fully negotiable.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).**

7-15-4304. Presumption of regularity of bond issuance. In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this part and part 42 or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project as herein defined shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this part and part 42.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(f).

7-15-4305. Validity and sufficiency of signatures on bonds. In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this part and part 42 shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if such officials had remained in office until such delivery.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4306. Bonds as legal investments. (1) All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this part and part 42, provided that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, money in an amount which (together with any other money irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which money under the terms of said agreement is required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity.

(2) Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations.

(3) Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: En. Sec. 11, Ch. 195, L. 1959; R.C.M. 1947, 11-3911.

7-15-4307. Tax exemption for bonds. Bonds issued under the provisions of this part and part 42 are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4308 through 7-15-4320 reserved.

7-15-4321. Nature of urban renewal bonds. Bonds issued under 7-15-4301 shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall be subject only to the provisions of the Uniform Commercial Code and the limitations of this part and part 42.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4322. Details relating to urban renewal bonds. (1) Bonds issued under 7-15-4301 may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates not exceeding 9% a year, be in such denomination or denominations, be in such form (either coupon or registered), carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by the resolution, ordinance, or trust indenture or mortgage authorized pursuant thereto.

(2) (a) The bonds may be sold at not less than 98% of par at public or private sale or may be exchanged for other bonds on the basis of par.

(b) The bonds may be sold to the federal government at private sale at not less than par, and if less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold at public or private sale at not less than 98% of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 19, Ch. 253, L. 1979.

7-15-4323. Redemption of urban renewal bonds. Every municipality shall have power to redeem such bonds as have been issued pursuant to 7-15-4301 at the redemption price established therein or to purchase such bonds at less than redemption price. All such bonds so redeemed or purchased shall be canceled.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4324. Special bond provisions when tax increment financing is involved. (1) Bonds issued under this part for which a tax increment is pledged pursuant to 7-15-4282 through 7-15-4292 shall be designed to mature not later than 25 years from their date of issue and shall mature in such years and amounts that the principal and interest due on the bonds in each year shall not exceed the estimated tax increment and other estimated revenues, including proceeds of the bonds available for payment of interest thereon, pledged to their payment to be received in such year.

(2) The governing body, in the resolution or ordinance authorizing the bonds, shall determine the estimated tax increment and other revenues, if

any, for each year the bonds are to be outstanding. In calculating the costs under 7-15-4288 for which the bonds are issued, the municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increments pledged and sufficient for the payment thereof and to fund any reserve fund in respect of the bonds.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(g).

Part 44

Municipal Housing Authorities

7-15-4401. Findings and policy. It is hereby declared that:

(1) unsanitary or unsafe dwelling accommodations exist in urban areas throughout the state, and such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor conditions of buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(2) in such urban areas, many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations;

(3) in such urban areas, there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof, and consequently, many persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(4) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values;

(5) these conditions cannot be remedied by the ordinary operations of private enterprise;

(6) the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired;

(7) it is in the public interest that work on such projects be instituted as soon as possible; and

(8) the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative determination, to be in the public interest.

History: En. Sec. 2, Ch. 140, L. 1935; re-en. Sec. 5309.2, R.C.M. 1935; amd. Sec. 1, Ch. 153, L 1941; R.C.M. 1947, 35-102(part).

7-15-4402. Definitions. As used in this part or part 45, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Authority" or "housing authority" means a public body and a bod corporate and politic organized in accordance with the provisions of this par for the purposes, with the powers, and subject to the restrictions hereinafte set forth.

(2) "Bonds" means any bonds, interim certificates, notes, debentures, c other obligations of the authority issued pursuant to this part or part 45.

(3) "City" means any city which is or is about to be included in the territorial boundaries of an authority.

(4) "City clerk" and "mayor" mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor.

(5) "Commissioner" means one of the members of an authority appointed in accordance with the provisions of this part.

(6) "Community facilities" means real and personal property and buildings and equipment for recreational or social assemblies and for educational, health, or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodations.

(7) "Contract" means any agreement of an authority with or for the benefit of an obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(8) "Council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing a city.

(9) "Elderly families" means families the head of which (or his spouse) is 60 years of age or over and who otherwise qualify as persons of low income within the meaning of the definition set forth in subsection (16).

(10) "Federal government" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(11) "Government" means the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either.

(12) (a) "Housing project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

(i) to demolish, clear, remove, alter, or repair unsanitary or unsafe housing; and/or

(ii) to provide safe and sanitary dwelling accommodations for persons of low income.

(b) The term "housing project" may also be applied to the planning of the buildings and improvements; the acquisition of property; the demolition of existing structures; the construction, reconstruction, alteration, and repair of the improvements; and all other work in connection therewith.

(13) "Mortgage" means deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Municipality" means any city, town, or incorporated village which is located within the territorial boundaries of an authority.

(15) "Obligee of the authority" or "obligee" means any bondholder, trustee for any bondholder, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of such lessor's interest or any part thereof, and the United States when it is a party to any contract with the authority.

(16) "Persons of low income" means persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

(17) "Real property" means lands, lands under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(18) "State" means the state of Montana.

(19) "Trust indenture" means instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

History: **En. Sec. 3, Ch. 140, L. 1935; re-en. Sec. 5309.3, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1957; amd. Sec. 1, Ch. 133, L. 1973; R.C.M. 1947, 35-103; amd. Sec. 20, Ch. 253, L. 1979.**

7-15-4403. Petition to create municipal housing authority — hearing and notice. (1) Any 25 residents of a city and of the area within 10 miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area.

(2) Upon the filing of such a petition, the city clerk shall give notice of the time, place, and purpose of a public hearing at which the council will determine the need for an authority in the city and said surrounding area.

History: **En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).**

7-15-4404. Notice of hearing on petition. The notice required by 7-15-4403 shall be given at the city's expense by publishing a notice at least 10 days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area or, if there be no such newspaper, by posting such a notice in at least three public places within the city at least 10 days preceding the day on which the hearing is to be held.

History: **En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).**

7-15-4405. Hearing on petition. Upon the date fixed for said hearing held upon notice as provided in 7-15-4403 and 7-15-4404, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons.

History: **En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).**

7-15-4406. Decision of city council. (1) After such a hearing, the council shall determine:

(a) whether unsanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area; and/or

(b) whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

(2) If it shall determine that either or both of the above-enumerated conditions exist, the council must draft an ordinance authorizing the mayor to appoint five commissioners to act as an authority.

(3) If the council, after a hearing as aforesaid, shall determine that neither of the above-enumerated conditions exist, it shall adopt a resolution denying the petition. After 3 months shall have expired from the date of the

denial of any such petition, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4407. Criteria for determining if unsafe or unsanitary dwelling accommodations exist. In determining whether dwelling accommodations are unsafe or unsanitary, the council shall take into consideration the following:

(1) the physical condition and age of the buildings;

(2) the degree of overcrowding;

(3) the percentage of land coverage;

(4) the light and air available to the inhabitants of such dwelling accommodations;

(5) the size and arrangement of the rooms;

(6) the sanitary facilities; and

(7) the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4408. Voter approval required to create housing authority. The ordinance authorized by 7-15-4406(2) shall not be effective until it has been approved by a majority vote of the registered electors within the city limits voting at either a special or general election.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part); amd. Sec. 344, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-15-4409. Application for incorporation. (1) The commissioners shall present to the secretary of state an application signed by them which shall set forth (without any detail other than the mere recital):

(a) that a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;

(b) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;

(d) the name which is proposed for the corporation; and

(e) the location of the principal office of the proposed corporation.

(2) The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the

application and that each subscribed and swore thereto in the officer's presence.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4410. Processing of application by secretary of state. (1) The secretary of state shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the same with the application.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4411. Effect of filing and recording application. When the application has been made, filed, and recorded as provided in 7-15-4409 and 7-15-4410, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4412. Presumption of regularity in creation of municipal housing authority. (1) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part upon proof of the issuance of the aforesaid certificate by the secretary of state.

(2) A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4413. Boundaries of municipal housing authority. (1) The boundaries of such authority shall include said city and the area within 10 miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city unless a resolution shall have been adopted by the governing body of such other city declaring that there is a need for such authority to exercise its powers within that city.

(2) After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4414. Problems arising from existence of several overlapping authorities. (1) In case an area lies within 10 miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state.

(2) No housing authority shall operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4415. Cooperation between housing authorities. Any two or more housing authorities may join or cooperate with one another in the exercise of any or all of the powers conferred on such housing authorities for the purpose of financing, planning, undertaking, constructing, or operating a housing project or projects located within the area of operation of any one or more of such housing authorities.

History: En. Sec. 10, Ch. 140, L. 1935; re-en. Sec. 5309.10, R.C.M. 1935; amd. Sec. 2, Ch. 153, L. 1941; R.C.M. 1947, 35-110.

7-15-4416. Cooperation among governmental units and housing authorities. (1) An authority shall have power to arrange with the state, its subdivisions and agencies, and any county, city, or municipality of the state, to the extent that it is within the scope of each of their respective functions:

(a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing project;

(b) to provide and maintain parks and sewage, water, and other facilities adjacent to or in connection with housing projects; and

(c) to change the city or municipality map or to plan, replan, zone, or rezone any part of the city or municipality.

(2) (a) For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects located within their respective territorial boundaries, the state, its subdivisions and agencies, and any county, city, or municipality of the state may, upon such terms, with or without consideration, as it may determine:

(i) grant, sell, convey, or lease any of its property to a housing authority or the United States of America or any agency thereof; and

(ii) to the extent that it is within the scope of each of their respective functions:

(A) cause the services customarily provided by each of them to be rendered for the benefit of the housing authority and/or the occupants of such housing projects;

(B) provide and maintain parks and sewage, water, and other facilities adjacent to or in connection with housing projects; and

(C) enter into any agreement to open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other such facilities; to change the city or municipality map; or to plan, replan, zone, or rezone any part of the city or municipality.

(b) Any law or statute to the contrary notwithstanding, any gift, grant, sale, conveyance, lease, or agreement provided for in this subsection may be made by the state, its subdivisions and agencies, and any county, city, or municipality of the state without appraisal, public notice, advertisement, or public bidding.

(c) In connection with the exercise of the power granted by subsection (2), any city or municipality may incur the entire expense of any such public improvement located within its territorial boundaries without assessment against abutting property owners.

(d) As used in subsection (2):

(i) "municipality" shall mean any city, town, or incorporated village of the state;

(ii) "housing project" shall mean any undertaking to demolish, clear, remove, alter, or repair unsafe or unsanitary housing and/or to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health, or welfare purposes and such necessary utilities as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations.

History: (1)En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; Sec. 35-109, R.C.M. 1947; (2)(a) thru (2)(c)En. Sec. 3, Ch. 138, L. 1935; re-en. Sec. 5309.30, R.C.M. 1935; Sec. 35-137, R.C.M. 1947; (2)(d)En. Sec. 2, Ch. 138, L. 1935; re-en. Sec. 5309.29, R.C.M. 1935; Sec. 35-136, R.C.M. 1947; R.C.M. 1947, 35-109(part), 35-136(3), (4), 35-137.

7-15-4417. Initial funding of housing authority. Immediately after the incorporation of a housing authority, the council or other governing body of a first- or second-class city included within the territorial boundaries of the authority:

(1) shall make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first year following the incorporation of the housing authority;

(2) shall appropriate such amount to the authority out of any money in the city treasury not appropriated to some other purpose; and

(3) shall cause the money so appropriated to be paid the authority as a donation.

History: Ap. p. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; Sec. 35-138, R.C.M. 1947; Ap. p. Sec. 2, Ch. 138, L. 1935; re-en. Sec. 5309.29, R.C.M. 1935; Sec. 36-136, R.C.M. 1947; R.C.M. 1947, 35-136(2), 35-138(part); amd. Sec. 21, Ch. 253, L. 1979.

7-15-4418. Interim funding of housing authority. In addition to the power granted in 7-15-4417, any municipality located in whole or in part within the boundaries of a housing authority may, annually and from time to time, make donations or advances to the authority of such sums as the municipality in its discretion may determine.

History: En. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; R.C.M. 1947, 35-138(part); amd. Sec. 22, Ch. 253, L. 1979.

7-15-4419. Authority to reimburse municipality for loans. The authority, when it has money available therefor, shall reimburse a municipality for all advances made to it by way of loan.

History: En. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; R.C.M. 1947, 35-138(part); amd. Sec. 23, Ch. 253, L. 1979.

7-15-4420. Procedure to implement certain sections. (1) Except as otherwise provided in 7-15-4416(2) and 7-15-4417 through 7-15-4419, all action authorized to be taken under 7-15-4416(2) and 7-15-4417 through 7-15-4419 by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body.

(2) The resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted.

History: En. Sec. 5, Ch. 138, L. 1935; re-en. Sec. 5309.32, R.C.M. 1935; R.C.M. 1947, 35-139.

7-15-4421. Municipal housing authority to be nonprofit. It is hereby declared to be the policy of this state that:

(1) each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations; and

(2) no housing authority shall construct or operate any such project for profit or as a source of revenue to the city.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27F, R.C.M. 1935; R.C.M. 1947, 35-133(part).

7-15-4422. Authorization to dissolve housing authority. If, after the lapse of 2 years from the creation of a housing authority by the filing and recording in the office of the secretary of state of the application as provided in 7-15-4410, no housing project has been commenced and no contract has been signed by the council or the mayor on behalf of the municipality with the housing authority or United States housing authority providing for contributions by the municipality either in cash or by tax remissions or exemptions in aid or support of any such housing project, such housing authority may be dissolved as provided in 7-15-4423.

History: En. Sec. 1, Ch. 25, L. 1941; re-en. Sec. 5309.37, R.C.M. 1935; R.C.M. 1947, 35-146(part).

7-15-4423. Resolution to dissolve housing authority. (1) When a housing authority is subject to dissolution as provided in 7-15-4422, the council may, at any regular meeting of the council, without any previous notice, and in its discretion, adopt a resolution declaring that:

(a) dwelling accommodations in the city and surrounding area are such that there is no need for the construction of any housing project;

(b) the need for the creation of a housing authority no longer exists; and

(c) the same be disbanded and dissolved.

(2) The resolution shall be spread upon the minutes of the meeting of the council. Thereupon, a copy of the said resolution shall be duly certified by the mayor and city clerk and filed for record in the office of the secretary of state, whereupon the housing authority shall be dissolved and all functions thereof cease and the commissioners thereof discharged from any further duties or powers.

History: En. Sec. 1, Ch. 25, L. 1941; re-en. Sec. 5309.37, R.C.M. 1935; R.C.M. 1947, 35-146(part).

7-15-4424 through 7-15-4430 reserved.

7-15-4431. Appointment of commissioners. (1) An authority shall consist of five commissioners appointed by the mayor, and he shall designate the first chairman. No commissioner may be a city official.

(2) The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

7-15-4432. Term of office. (1) The commissioners who are first appointed shall be designated by the mayor to serve for terms of 1, 2, 3, 4, and 5 years, respectively, from the date of their appointment. Thereafter the term of office shall be 5 years.

(2) A commissioner shall hold office until his successor has been appointed and has qualified.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

7-15-4433. Compensation of commissioners. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

7-15-4434. Vacancies. Vacancies shall be filled for the unexpired term.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

7-15-4435. Control of conflict of interest. (1) No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.

(2) (a) If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority, and such disclosure shall be entered upon the minutes of the authority.

(b) Failure to so disclose such interest shall constitute misconduct in office.

History: En. Sec. 7, Ch. 140, L. 1935; re-en. Sec. 5309.7, R.C.M. 1935; R.C.M. 1947, 35-107.

7-15-4436. Removal of commissioners. The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

History: En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part).

7-15-4437. Right of obligee of authority to request removal of commissioner. (1) Any obligee of the authority may file with the mayor written charges that the authority is willfully violating any law of the state or any term, provision, or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least 10 days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within 15 days after receipt of such charges remove any commissioner of the authority who shall have been found to have acquiesced in any such willful violation.

(2) A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this state or of any term, provision, or covenant contained in a contract to which the authority is a party if, before a hearing is held on the charges against him, he shall not have filed a written statement with the authority of his objections to or lack of participation in such violation.

History: **En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part).**

7-15-4438. Record of removal proceedings. In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings, together with the charges made against the commissioners and the findings thereon.

History: **En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part).**

7-15-4439. Conduct of business. (1) Three commissioners shall constitute a quorum.

(2) When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman.

(3) An authority may:

(a) employ a secretary (who shall be executive director), technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation;

(b) call upon the corporation counsel or chief law officer of the city for such legal services as it may require or employ its own counsel and legal staff;

(c) delegate to one or more of its agents or employees such powers or duties as it may deem proper.

History: **En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).**

7-15-4440. Certain laws controlling. (1) Insofar as the provisions of Chapter 140, Laws 1935, are inconsistent with the provisions of any other law, the provisions of Chapter 140, Laws 1935, shall be controlling.

(2) Insofar as the provisions of Chapter 193, Laws 1957, are inconsistent with the provisions of any other law, the provisions of Chapter 193, Laws 1957, shall be controlling.

History: **(1)En. Sec. 28, Ch. 140, L. 1935; re-en. Sec. 5309.27, R.C.M. 1935; Sec. 35-127, R.C.M. 1947; (2)En. Sec. 9, Ch. 193, L. 1957; Sec. 35-125.2, R.C.M. 1947; R.C.M. 1947, 35-125.2, 35-127.**

7-15-4441 through 7-15-4450 reserved.

7-15-4451. General powers of housing authority. (1) An authority shall exercise public powers and have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part and part 45, including the following powers in addition to others herein granted.

(2) An authority shall have power to:

(a) sue and be sued;

(b) have a seal and alter the same at pleasure;

(c) have perpetual succession;

(d) make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(e) make and from time to time amend and repeal bylaws and rules, not inconsistent with this part and part 45, to carry into effect the powers and purposes of the authority.

(3) In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this part and part 45.

History: **En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).**

7-15-4452. Exercise of powers. (1) An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations.

(2) Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein.

History: **En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).**

7-15-4453. Strict compliance with laws and contracts required. The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this part and part 45 and the laws of the state and, in addition thereto, with each and every term, provision, and covenant in any contract of the authority to be kept or performed on its part.

History: **En. Sec. 6, Ch. 140, L. 1935; re-en. Sec. 5309.6, R.C.M. 1935; R.C.M. 1947, 35-106.**

7-15-4454. General powers related to housing programs. An authority shall have power to:

(1) determine where unsafe or unsanitary dwelling or housing conditions exist;

(2) study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning, and reconstruction of areas in which unsafe or unsanitary dwelling or housing conditions exist and the providing of dwelling accommodations for persons of low income and to cooperate with any city, municipal, or regional planning agency;

(3) prepare, carry out, and operate housing projects;

(4) provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof;

(5) take over by purchase, lease, or otherwise any housing project located within its boundaries undertaken by any government;

(6) act as agent for the federal government in connection with the acquisition, construction, operation, and/or management of a housing project or any part thereof;

(7) arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening, or closing of streets, options, or property rights or for the furnishing of property or services in connection with a project;

(8) lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures, or facilities embraced in any housing project and to establish and revise the rents or charges therefor.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4455. Housing projects subject to planning, zoning, and building laws. All housing projects of an authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated.

History: En. Sec. 13, Ch. 140, L. 1935; re-en. Sec. 5309.13, R.C.M. 1935; R.C.M. 1947, 35-113.

7-15-4456. Low-rent housing for the elderly. (1) For the purpose of increasing the supply of low-rent housing for elderly families, an authority may develop, construct, and operate new housing or acquire, remodel, and operate existing housing in order to provide accommodations designed specifically for such elderly families.

(2) Notwithstanding the provisions of this or any other law, an authority, in respect to dwelling units suitable to the needs of elderly families, may extend a prior preference in occupancy to such elderly families.

History: En. 35-103.1 by Sec. 2, Ch. 193, L. 1957; R.C.M. 1947, 35-103.1(part).

7-15-4457. Federal financial assistance for low-rent housing for the elderly. (1) Any application of the authority for federal financial assistance for such housing for elderly families shall first be approved by the council by resolution duly adopted.

(2) An authority may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the authority.

History: En. 35-103.1 by Sec. 2, Ch. 193, L. 1957; R.C.M. 1947, 35-103.1(part).

7-15-4458. Investigatory powers of housing authority. (1) An authority shall have power to:

(a) investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions;

(b) enter upon any building or property in order to conduct investigations or to make surveys or soundings;

(c) conduct examinations and investigations and hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(d) issue subpoenas requiring the attendance of witnesses or the production of books and papers and issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority or excused from attendance.

(2) Any of the investigations or examinations provided for in this part and part 45 may be conducted by the authority, by a committee appointed by it and consisting of one or more commissioners, by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits, and issue subpoenas or commissions.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4459. Availability of housing authority findings and determinations. An authority shall have power to make available to such agencies, boards, or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4460. Powers of housing authority relating to acquisition and disposition of property. (1) An authority shall have power to:

(a) purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein from any person, firm, corporation, city, municipality, or government;

(b) acquire by eminent domain any real property, including improvements and fixtures thereon;

(c) sell, exchange, transfer, assign, or pledge any real or personal property or any interest therein to any person, firm, corporation, municipality, city, or government;

(d) own, hold, clear, and improve property;

(e) insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable;

(f) procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project.

(2) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4461. Acquisition of property by authority for government housing project. The authority may acquire, by purchase or by the exercise of its power of eminent domain as provided in 7-15-4462, any real or personal property for any housing project being constructed or operated by a government. The authority, upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project.

History: En. Sec. 12, Ch. 140, L. 1935; re-en. Sec. 5309.12, R.C.M. 1935; R.C.M. 1947, 35-112.

7-15-4462. Exercise of power of eminent domain. (1) After the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use, the authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this part and part 45.

(2) The authority may exercise the power of eminent domain pursuant to the provisions of either:

(a) Title 70, chapter 30; or

(b) Any other applicable statutory provisions for the exercise of the power of eminent domain.

(3) Property already devoted to a public use may be acquired, provided that no property belonging to any city or municipality within the boundaries of the authority or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if there be any, having regulatory power over such corporation.

History: En. Sec. 11, Ch. 140, L. 1935; re-en. Sec. 5309.11, R.C.M. 1935; R.C.M. 1947, 35-111.

7-15-4463. Title to property acquired from housing authority subject to agreements with governments. Notwithstanding anything in this part or part 45 to the contrary, any purchaser or purchasers at a sale of real or personal property of the authority, whether pursuant to any foreclosure of a mortgage or pursuant to judicial process or otherwise, shall obtain title subject to any contract between the authority and a government relating to the supervision by a government of the operation and maintenance of such property and the construction of improvements thereon.

History: En. Sec. 22, Ch. 140, L. 1935; re-en. Sec. 5309.22, R.C.M. 1935; R.C.M. 1947, 35-122.

7-15-4464. Authorization for payment of rentals in lieu of taxes. (1) Any housing authority established pursuant to this part and/or the federal government may pay annual sums from rentals in lieu of taxes to any state and/or political subdivision thereof with respect to any real property, including improvements thereon, owned or held by either such housing authority or the federal government.

(2) The amount so paid for any year upon such property shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the case may be, upon such property if it were not exempt from taxation, with such allowances as may be considered to be appropriate for expenditures by the government for streets, utilities, or other public services to serve such property.

History: En. Sec. 4, Ch. 215, L. 1943; R.C.M. 1947, 35-304.

7-15-4465. Payments by housing authorities to local and state bodies. Notwithstanding any limitations in this or any other law, any housing authority may agree to make such payments to the county, city, or municipality, the state or any political subdivision or agency thereof (which payments such bodies are hereby authorized to accept) as the authority finds consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this housing authorities law.

History: En. Sec. 35-125.1 by Sec. 7, Ch. 193, L. 1957; R.C.M. 1947, 35-125.1.

7-15-4466. Special powers and contract provisions when federal government involved. (1) In addition to the powers conferred upon the authority by other provisions of this part or part 45, the authority is empowered to:

(a) borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this part or part 45 to undertake;

(b) take over any land acquired by the federal government for the construction of a housing project;

(c) take over or lease or manage any housing project constructed or owned by the federal government; and

(d) these ends, enter into such contracts, mortgages, trust indentures, leases, or other agreements as the federal government may require, including agreements that the federal government shall have the right to supervise and approve the construction, maintenance, and operation of such housing project.

(2) (a) In any contract with the federal government for annual contributions to an authority, the authority may obligate itself to convey to the federal government possession of or title to the project to which such contract relates upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the authority is subject. This obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other laws.

(b) Such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project in accordance with the terms of such contract, provided that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the project as then constituted.

(3) A housing authority shall have the power (notwithstanding anything to the contrary contained in this part or part 45 or in any other provision of law) to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards in the development or administration of projects and to include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum salaries or wages and maximum hours of labor and comply with any conditions which the federal government may have attached to the financial aid of the project.

History: (1), (2)En. Sec. 23, Ch. 140, L. 1935; re-en. Sec. 5309.23, R.C.M. 1935; amd. Sec. 5, Ch. 193, L. 1957; Sec. 35-123, R.C.M. 1947; (3)En. Sec. 25, Ch. 140, L. 1935; re-en. Sec. 5309.25, R.C.M. 1935; amd. Sec. 4, Ch. 153, L. 1941; amd. Sec. 6, Ch. 193, L. 1957; Sec. 35-125, R.C.M. 1947; R.C.M. 1947, 35-123(part), 35-125.

7-15-4467. Reports by authority to municipality. The authority shall, at least once a year, file with the mayor of the city a report of its activities for the preceding year and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this part and part 45.

History: En. Sec. 26, Ch. 140, L. 1935; re-en. Sec. 5309.26, R.C.M. 1935; R.C.M. 1947, 35-126.

Part 45

Municipal Housing Authorities Continued

7-15-4501. Authorization to issue bonds. The authority shall have power and is hereby authorized to issue, from time to time in its descretion, for any of its corporate purposes:

(1) bonds on which the principal and interest are payable:

(a) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing the construction thereof; or

(b) exclusively from the income and revenues of certain designated housing projects, whether or not they were financed in whole or in part with the proceeds of such bonds; provided, however, that the credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only (and the bonds shall so state on their face) from the revenues of the designated housing project or projects and the funds received from the sale or disposal thereof and, if the authority so determines, shall be additionally secured by a trust indenture pledging such revenues or, in certain instances as hereinafter provided, by a mortgage of the property comprising such designated housing project or projects and the revenue therefrom;

(2) bonds for the payment of the principal and interest of which the credit of the authority is pledged and which may be additionally secured by a pledge of the revenues of the authority or any part thereof pursuant to a resolution or trust indenture of the authority or, in certain instances as hereinafter provided, may be additionally secured by a mortgage of the property and revenues of the authority or any part thereof.

History: En. Sec. 14, Ch. 140, L. 1935; re-en. Sec. 5309.14, R.C.M. 1935; R.C.M. 1947, 35-114(part).

7-15-4502. Powers related to loans. An authority shall have power:

(1) to borrow money upon its bonds, notes, debentures, or other evidences of indebtedness and to secure the same by pledges of its revenues and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it or in any other manner;

(2) in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects;

(3) in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this part and part 44;

(4) to invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4503. Nature of bonded indebtedness. (1) Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(2) The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the state, and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority.

(3) The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory provision of the laws of the state. Bonds may be issued under this part and part 44 notwithstanding any debt or other limitation prescribed by any statute.

History: En. Sec. 14, Ch. 140, L. 1935; re-en. Sec. 5309.14, R.C.M. 1935; R.C.M. 1947, 35-114(part).

7-15-4504. Bonds and other obligations to be fully negotiable. Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this part and part 44 shall be fully negotiable.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4505. Housing authority bonds as legal investments. (1) The state and all public officers, municipal corporations, political subdivisions, and public bodies; all banks, bankers, trust companies, savings banks and institutions, buildings and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds money, or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority established pursuant to the housing authorities law of this state or issued by any public housing authority or agency in the United States when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof.

(2) It is the purpose of this section to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including but no limited to sinking, insurance, investment, retirement, compensation, pension and trust funds and funds held on deposit, for the purchase of any suc bonds or other obligations.

(3) Nothing contained in this section shall be construed as relieving an person, firm, or corporation from any duty of exercising reasonable care i selecting securities.

(4) Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall be controlling.

History: En. Secs. 1, 3, Ch. 218, L. 1943; R.C.M. 1947, 35-143(part), 35-144.

7-15-4506. Details relating to bonds. (1) The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series.

(2) The bonds shall bear such date or dates, mature at such time or times (not exceeding 60 years from their respective dates), bear interest at such rate or rates, be in such denominations (which may be made interchangeable), be in such form (either coupon or registered), carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

(3) In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(a) covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage, or other instrument; as to the issuance of such bonds in escrow or otherwise; and as to the use and disposition of the proceeds thereof;

(b) covenant as to what other or additional debt may be incurred by it;

(c) provide for the terms, form, registration, exchange, execution, and authentication of bonds;

(d) provide for the replacement of lost, destroyed, or mutilated bonds;

(e) covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

History: (1), (2)En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; Sec. 35-115, R.C.M. 1947; (3)En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; Sec. 35-116, R.C.M. 1947; R.C.M. 1947, 35-115(part), 35-116(part).

7-15-4507. Sale of bonds. (1) The bonds may be sold at public sale held after notice published once at least 10 days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of .... or in the city of .....

(2) Such bonds may be sold to the federal government at private sale without any public advertisement.

(3) The bonds may be sold at such price or prices as the authority shall determine.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4508. Purchase of bonds by housing authority. (1) The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled.

(2) This section shall not apply to the redemption of bonds.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4509. Interim certificates. Pending the authorization, preparation, execution, or delivery of definitive bonds, the authority may issue interim certificates or other temporary obligations to the purchaser of such bonds. Such interim certificates or other temporary obligations shall be in such form; contain such terms, conditions, and provisions; bear such date or dates; and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture, or mortgage determine.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4510. Validity and sufficiency of signatures on bonds. In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4511. Creation of special funds. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) create or authorize the creation of special funds in which there shall be segregated:

(a) the proceeds of any loan and/or grant;

(b) all of the rents, fees, and revenues of any housing project or projects or parts thereof;

(c) any money held for the payment of the costs of operation and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof;

(d) any money held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and

(e) any money held for any other reserves or contingencies; and

(2) covenant as to the use and disposal of the money held in such funds.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4512. Security for money deposited by housing authority. (1) The authority may by resolution provide that all money deposited by it shall be secured by:

(a) obligations of the United States or of the state of a market value equal at all times to the amount of such deposits;

(b) any securities in which savings banks may legally invest funds within their control; or

(c) an undertaking with such sureties as shall be approved by the authority to faithfully keep and pay over upon the order of the authority any such deposits and agreed interest thereon.

(2) All banks and trust companies are authorized to give any such security for such deposits.

History: En. Sec. 24, Ch. 140, L. 1935; re-en. Sec. 5309.24, R.C.M. 1935; R.C.M. 1947, 35-124.

7-15-4513 through 7-15-4520 reserved.

7-15-4521. General powers related to bonds and lease obligations. (1) In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or oligations, the authority shall have power to:

(a) execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those specified in 7-15-4506, 7-15-4511, and 7-15-4521 through 7-15-4528, as the government or any purchaser of the bonds of the authority may reasonably require;

(b) make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the absolute discretion of the authority, tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated herein;

(c) make covenants, other than in addition to the covenants expressly authorized in this part or part 44, of like or different character.

(2) It is the intention of subsection (1)(b) hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security, that are not inconsistent with the constitution of the state, and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its real or personal property except as provided in 7-15-4526.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4522. Redemption of bonds. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to redeem the bonds and covenant for their redemption and provide the terms and conditions thereof.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4523. Amendment or abrogation of bond contracts. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4524. Bond provisions related to determination and use of rents and fees. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) pledge by resolution, trust indenture, mortgage (subject to the limitations imposed in this part), or other contract all or any part of its rents, fees, or revenues;

(2) covenant against pledging all or any part of its rents, fees, and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;

(3) covenant as to the rents and fees to be charged, as to the amount (calculated as may be determined) to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4525. Bond provisions related to management and use of property. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) covenant against mortgaging all or any part of its real or personal property, then owned or thereafter acquired, or against permitting or suffering any lien thereon;

(2) covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof or with respect to limitations on its right to undertake additional housing projects;

(3) provide for the release of property, rents, fees, and revenues from any pledge or mortgage and reserve rights and powers in or the right to dispose of property which is subject to a pledge or mortgage;

(4) covenant that the authority warrants the title to the premises;

(5) covenant as to the use of any or all of its real or personal property;

(6) covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance money.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4526. Power to mortgage property when government financing involved. (1) In connection with any project financed in whole or in part by a government, the authority shall also have power to mortgage all or any part of its real or personal property, then owned or thereafter acquired, and thereby:

(a) to vest in a government the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings so long as a government shall be the holder of any of the bonds secured by such mortgage;

(b) to vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the housing project involved;

(c) to vest in other obligees the right to foreclose such mortgage by judicial proceedings, but only with the consent of the government which aided in financing the project involved;

(d) to vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid, to foreclose such mortgage as to all or such part or parts of the property covered thereby as such obligee in its absolute discretion shall elect.

(2) The institution, prosecution, and conclusion of any foreclosure proceedings authorized by subsection (1)(d) and/or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid.

History: **En. Sec. 17, Ch. 140, L. 1935; re-en. Sec. 5309.17, R.C.M. 1935; R.C.M. 1947, 35-117.**

7-15-4527. Provisions related to breach or default on bonds and bond covenants. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(2) vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant to be kept or performed on its part, to cure any such default and to advance any money necessary for such purpose, and the money so advanced may be made an additional obligation of the authority with such interest, security, and priority as may be provided in any trust indenture, mortgage, lease, or contract of the authority with reference thereto;

(3) covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(4) covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right, without judicial proceedings, to take possession and to use, operate, manage, and control such housing projects or any part thereof and to collect and receive all rents, fees, and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the money collected in accordance with the agreement of the authority with such obligee.

History: **En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).**

7-15-4528. Use of bond trustee. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of the bonds and/or obligations, the authority may:

(1) vest in a trustee the right to enforce any covenant made to secure the payment of the bonds and/or obligations;

(2) provide for the powers and duties of the trustee and limit his liabilities; and

(3) provide the terms and conditions upon which the trustee or a designated proportion of the holders of bonds may enforce any covenant.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part); amd. Sec. 24, Ch. 253, L. 1979.

7-15-4529. General remedies of an obligee of a housing authority. An obligee of the authority shall have the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) by mandamus, suit, action, or proceeding in law or equity (all of which may be joined in one action), to compel the authority and the commissioners, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of the authority and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this part or part 44;

(2) by suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of the authority;

(3) by suit, action, or proceeding in any court of competent jurisdiction, to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority.

History: En. Sec. 18, Ch. 140, L. 1935; re-en. Sec. 5309.18, R.C.M. 1935; R.C.M. 1947, 35-118.

7-15-4530. Special remedies of an obligee resulting from mortgage or trust indenture. (1) Any authority shall have power by its trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds, leases, or other obligations the right, upon the happening of an event of default as defined in such instrument:

(a) by suit, action, or proceeding in any court of competent jurisdiction, to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof;

(b) by suit, action, or proceeding in any court of competent jurisdiction, to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

(2) If a receiver is appointed pursuant to subsection (1)(a), he may enter and take possession of such housing project or any part of parts thereof and operate and maintain the same and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

History: En. Sec. 19, Ch. 140, L. 1935; re-en. Sec. 5309.19, R.C.M. 1935; R.C.M. 1947, 35-119.

7-15-4531. Remedies of obligees to be cumulative. All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority.

History: **En. Sec. 20, Ch. 140, L. 1935; re-en. Sec. 5309.20, R.C.M. 1935; R.C.M. 1947, 35-120.**

7-15-4532. Limitations on remedies of obligees. (1) No interest of the authority in any real or personal property shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in 7-15-4526.

(2) All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its real or personal property.

(3) The provisions of this section shall not apply to or limit the right of obligees to foreclose any mortgage of the authority provided for in 7-15-4526 and, in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and issued on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree.

History: **En. Sec. 21, Ch. 140, L. 1935; re-en. Sec. 5309.21, R.C.M. 1935; R.C.M. 1947, 35-121.**

CHAPTER 16

CULTURE, SOCIAL SERVICES, AND RECREATION

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Section

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Part 1

General Provisions Affecting Local Governments

7-16-101. Creation of funds for recreational and other activities of elderly by local governments. (1) The governing body of a city, county, town, or municipality may in its discretion establish a fund to promote, establish, and maintain recreational, educational, and other activities of the elderly by a levy of up to 1 mill on each dollar of taxable property, which tax levy shall be in addition to all other tax levies.

(2) The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine. Expenditures shall be made for the promotion and development of recreational, educational, and other activities of the elderly, including motivation of the use of the talents of the elderly.

(3) The governing body may make payment of expenditures to nonprofit corporations or associations engaged in aiding the activities.

History: En. Sec. 1, Ch. 380, L. 1971; R.C.M. 1947, 71-1701.

7-16-102. Use of county lands for public parks and recreational grounds. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park or recreational grounds.

(2) The conveyance is subject to the provisions of 7-8-102.

History: En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

Parts 2 through 20 reserved

Part 21

General Provisions Affecting County Government

7-16-2101. Construction and maintenance of county cultural, social, and recreational facilities. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a civic center, a youth center, park buildings, museums, recreation centers, and any combination thereof to be erected, furnished, and maintained.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-16-2102. Authorization for tax levy for certain cultural, social, and recreational facilities. (1) The board of county commissioners, after a county-owned civic center, youth center, recreation center, or any combination of two or more thereof has been established, may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax, not to exceed 2 mills on each dollar of the taxable valuation for any one year, for the purpose of maintaining, operating, and equipping such county-owned civic center, youth center, recreation center, or any combination of two or more thereof.

(2) All laws applicable to the collection of county taxes shall apply to the collection of the tax provided herein.

History: En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973; R.C.M. 1947, 16-1179(part).

7-16-2103. Establishment of civic-youth-recreation center fund. (1) All funds derived from the tax authorized by 7-16-2102, together with all revenue and income from such civic center, youth center, recreation center, or any combination of two or more thereof:

(a) shall constitute a separate fund called the civic-youth-recreation center fund;

(b) shall be deposited with the county treasurer; and

(c) shall not be used for any purposes except those of such civic center, youth center, recreation center, or any combination of two or more thereof.

(2) All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county.

History: En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973; R.C.M. 1947, 16-1179(part).

7-16-2104. Multicounty youth guidance centers. Two or more counties of this state may, through action of their respective boards of county commissioners, join together by contract in the establishment of a joint county youth guidance center. The cost and expenses of such joint county youth guidance center shall be apportioned between or among the contracting counties on such a basis as to be agreed upon by said contracting counties.

History: En. Sec. 1, Ch. 24, L. 1961; R.C.M. 1947, 16-1008B.

7-16-2105. Acquisition of land by county for public recreational or cultural purposes. (1) The several counties of this state are hereby authorized and empowered to acquire, by purchase, grant, deed, gift, devise, condemnation, or otherwise, lands suitable for public camping and public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination thereof or may lease such land tracts, each of which shall be so situated as to offer ready access to a public highway.

(2) Nothing contained herein shall be construed as amending or repealing 7-16-2201 through 7-16-2205.

History: **En. Sec. 1, Ch. 51, L. 1929; re-en. Sec. 4444.1, R.C.M. 1935; amd. Secs. 1, 2, Ch. 239, L. 1947; R.C.M. 1947, 62-101.**

7-16-2106. Limitation on use of lands. All tracts of land acquired under 7-16-2105 shall be set aside and used exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number.

History: **En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; re-en. Sec. 4444.2, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959; amd. Sec. 1, Ch. 75, L. 1974; R.C.M. 1947, 62-102(part).**

7-16-2107. Expenditures for county parks. Except as otherwise provided by law, there are no restrictions on expenditures for the purpose of acquiring, maintaining, and equipping county parks.

History: **En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; re-en. Sec. 4444.2, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959; amd. Sec. 1, Ch. 75, L. 1974; R.C.M. 1947, 62-102(part).**

Part 22

County Museums

7-16-2201. Definition of term museums. For the purposes of this part, the word "museums" shall mean buildings or parts of buildings of which a principal purpose is the exhibition of objects of historical interest or of interest in one or more of the arts and sciences.

History: **En. Sec. 1, Ch. 17, L. 1945; amd. Sec. 1, Ch. 173, L. 1975; R.C.M. 1947, 16-1163(part).**

7-16-2202. Establishment and acquisition of museums. The board of county commissioners of each county of the state, in addition to all other powers now conferred upon them, shall have authority to establish or acquire museums, collections of exhibits, and articles, matters, and things to be included in or added to such museums and collections.

History: **En. Sec. 1, Ch. 17, L. 1945; amd. Sec. 1, Ch. 173, L. 1975; R.C.M. 1947, 16-1163(part).**

7-16-2203. Museum board of trustees — appointment and term. (1) The board of county commissioners of each county owning or acquiring any such museum or collection of exhibits may, at the first regular meeting of the board after acquiring any such museum or collection, appoint a board of trustees for such museum or collection.

(2) Such board shall consist of three responsible persons, electors and residents of the county. The term of one of said members shall expire on June

30 of the next following year, the term of another of said members shall expire on June 30 of the second following year, and the term of the third member to expire on June 30 of the third following year. Thereafter the board shall, at its regular meeting in July of each year, appoint a member of such board of trustees to take the place of the member whose term expired on June 30 immediately preceding.

History: **En. Sec. 3, Ch. 17, L. 1945; R.C.M. 1947, 16-1165(part).**

7-16-2204. Role of museum board of trustees. It shall be the duty of such board:

(1) to have the immediate custody, charge, and control of such museum or collection;

(2) to make such rules as may be necessary and reasonable for the preservation, upkeep, care, maintenance, operation, support, and display thereof; and

(3) to make to the board of county commissioners, not later than July 15 of each year:

(a) a report in writing, detailing all gifts and donations made to such museum or collection and the receipts and expenditures during the immediately preceding fiscal year; and

(b) an estimate of the amount to be budgeted for such museum or collection in the budget of the county for the then current fiscal year.

History: **En. Sec. 3, Ch. 17, L. 1945; R.C.M. 1947, 16-1165(part).**

7-16-2205. Authorization for mill levy for support of museums. (1) The board of county commissioners of any county owning or acquiring any such museum or collection of exhibits:

(a) may make an appropriation in its annual budget for the upkeep, care, maintenance, operation, and support thereof; and

(b) to meet and take care of such appropriation, may annually levy a tax of not to exceed 1 mill on each dollar of the taxable valuation of the property subject to taxation in the county.

(2) The levy shall be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of such levy shall be kept in a special fund by the county treasurer and used solely for the purpose for which such levy was made.

History: **En. Sec. 2, Ch. 17, L. 1945; amd. Sec. 2, Ch. 173, L. 1975; R.C.M. 1947, 16-1164.**

Part 23

County Board of Park Commissioners

7-16-2301. Authorization for county board of park commissioners. (1) There may be created in all counties a board of park commissioners.

(2) Such board shall constitute a department of the county government with the powers provided in this part.

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2302. Composition of park board. The board of park commissioners shall be composed of the county commissioners and six other persons appointed by the county commissioners.

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2303. Qualifications of park commissioners. The six persons to be so appointed shall have the same qualifications for the office of park commissioner as are required by 7-4-2201, for the office of county commissioner.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2304. Term of office. (1) Except as provided in subsection (2), the term of office of each park commissioner shall be 3 years with and after the first Monday of May of the year in which he is appointed and until his successor is appointed and qualified.

(2) Two of the commissioners first appointed shall hold office for the period of 1 year, two for 2 years, and two for 3 years with and after the first Monday of May and until their successors are appointed and qualified.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2305. Automatic vacation of office. Any park commissioner who shall refuse or neglect for a period of 3 consecutive months to attend the meetings of said board without leave of absence from said board or who shall fail for a period of 20 days from and after his appointment to qualify as provided in this part shall be deemed to have vacated his office, and thereupon, his successor may be appointed.

History: En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; R.C.M. 1947, 16-4804(part).

7-16-2306. Compensation of park commissioners. No park commissioner shall receive compensation for his services rendered under the provisions of this part, but the actual and necessary expense incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board.

History: En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; R.C.M. 1947, 16-4804(part).

7-16-2307. Oath of office. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe to the oath provided by 2-16-211. The oath shall be filed in the office of the county clerk and recorder.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2308. Organization of park board. On the first Monday of May in each year, said board of park commissioners shall meet and organize by electing one of their number president and one of their number vice-president, who shall hold their offices, respectively, for the term of 1 year.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2309. Duties of board officers. The president and, in his absence, the vice-president shall preside at all meetings of the board and shall countersign all warrants issued by the board.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2310. Clerk of board of park commissioners. (1) The board of park commissioners shall have the power to employ a secretary, not a member of the board, who shall be the clerk of the board of park commissioners and attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided by it for that purpose, to be called proceedings of the board of park commissioners of (entitled) county.

(2) It shall be the duty of the secretary to keep an accurate account of all transactions of said board and to make and submit in writing to said board at its first meeting in May in each year a report under oath showing in detail all the receipts and disbursements made by the board during the previous calendar year. The report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the county clerk and recorder and one in the office of the county treasurer. The secretary shall perform such other services as the board from time to time shall require.

(3) In the absence of the secretary at any meeting held by the board, it shall designate one of its members as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the secretary to be transcribed into the record book of said board.

History: **En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(part).**

7-16-2311. Evidentiary effect of park board minutes. The minutes of said meeting in said record book, when approved by the board, shall be prima facie evidence of the matters and things there recited in any court in this state.

History: **En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(part).**

7-16-2312. County park superintendent. The board of park commissioners shall have the power to employ a park superintendent, who may also be the secretary of the park board and who shall attend each regular meeting of the said board and report, either in writing or orally as the board may require, as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities over which he has supervision. The duties of the park superintendent shall be of a managerial capacity.

History: **En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(2).**

7-16-2313. Conduct of park board business. (1) The board of park commissioners shall hold an annual meeting on the first Monday of May and a meeting at least once in each month in each year at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president or, in his absence, the vice-president, upon giving to each member of said board at least 24 hours' notice in writing of the time and place of holding such meeting. A member of the board by his appearance at a special meeting shall waive the requirement of written notice.

(2) A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board.

History: **Ap. p. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; Ap. p. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part).**

7-16-2314. Control of conflict of interest and nepotism. (1) No park commissioner, directly or indirectly, shall be interested in or benefit by any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board.

(2) The laws of nepotism shall apply to employment under this part.

History: (1)En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; (2)En. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part).

7-16-2315 through 7-16-2320 reserved.

7-16-2321. Powers and duties of park board. A county park board, in addition to powers and duties now given under law, shall have the following powers and duties:

(1) to acquire by gift, grant, purchase, lease, or condemnation lands or facilities within or without the limits of corporate municipalities for parks, playgrounds, recreation areas, swimming pools, athletic fields, skating rinks, museums, zoos, golf courses, camps, multipurpose buildings for civic centers, fieldhouses, gymnasiums, youth centers, libraries, reading and meeting rooms, or combinations thereof;

(2) to furnish and equip and manage and control the same, including establishment by resolution of reasonable and uniform charges for the privilege of using the same;

(3) to lay out, establish, improve, and maintain grounds, parkways, drives, and walks in the parks and recreation areas of the county, make plats thereof and file the same in the office of the county clerk, and determine when and what parks and recreation areas shall be opened to the public;

(4) to pay all obligations authorized to be incurred by the provisions of this part;

(5) to exercise all other powers incident to the duties enjoined by the provisions of this part.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).

7-16-2322. Rules to implement part. (1) A county park board, in addition to powers and duties now given under law, shall have the following powers and duties:

(a) to make all rules necessary or convenient to protect and promote the improvement of land and facilities under the care and control of said board and for the protection of birds and animals inhabiting or frequenting land and facilities in parks and public places;

(b) to make all rules for the use of land and facilities by the public; and

(c) to provide penalties for the violation of such rules.

(2) The rules authorized by this section shall have the force of resolutions of the county commissioners.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).

7-16-2323. Leasing of county land for nonpark purposes. A county park board, in addition to powers and duties now given under law, shall have the power and duty to lease lands owned by the county, heretofore acquired for parks, which, in the judgment of the board, it shall not be advisable to improve as parks, upon such terms and conditions as the board shall deem to be for the best interests of the county. Such lands shall not be leased for a longer time than 5 years and not for a longer time than 1 year without the concurrence of two-thirds of the entire board of park commissioners.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).

7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of this section and part 25 of chapter 8, lands dedicated to the public use for park or playground purposes under 76-3-606 and 76-3-607 or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are considered county lands.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under this section and part 25 of chapter 8.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice of intention to sell, lease, or dispose of such lands, giving the people of the county opportunity to be heard regarding such action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body thereof for the action; and

(f) comply with any other applicable requirements under part 25 of chapter 8.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes shall be paid into the park fund and used in the manner prescribed in 76-3-606 and 76-3-607 for cash received in lieu of dedication.

History: En. 16-4808 by Sec. 5, Ch. 540, L. 1975; R.C.M. 1947, 16-4808; amd. Sec. 25, Ch. 253, L. 1979.

7-16-2325. Power of park board to employ persons and to make contracts. (1) A county park board, in addition to powers and duties now given under law, shall have the following powers and duties:

(a) to employ and discharge workmen, laborers, engineers, foresters, and others and to fix their compensation;

(b) to make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon said board by this part.

(2) All contracts made by said board shall be in the name of the county and shall be signed by the president or, in his absence, by the vice-president of said board, or upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with due notice and report being made to the board of county commissioners, such contracts may be signed by the chairman of the board of county commissioners and attested by the county clerk and recorder.

(3) No order or resolution authorizing the making of any contract shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes of the secretary.

History: (1)En. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; (2)En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; (3)En. Sec. 5, Ch. 306, L. 1967

amd. Sec. 4, Ch. 290, L. 1971; Sec. 16-4805, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part), 16-4805(part).

7-16-2326. Discrimination in employment prohibited. No contract of employment may be entered into except in compliance with federal and state statutes, orders, and rules providing that there may be no discrimination in employment.

History: En. Sec. 6, Ch. 306, L. 1967; amd. Sec. 3, Ch. 38, L. 1977; R.C.M. 1947, 16-4806; amd. Sec. 26, Ch. 253, L. 1979.

7-16-2327. Indebtedness for park purposes. (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, shall have the power and duty to contract an indebtedness in behalf of a county, upon the credit thereof, for the purposes of 7-16-2321(1) and (2).

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed 3% of the value of the taxable property of the county ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(b) No money must be borrowed on bonds issued for the purchase of lands and improving same for any such purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at such election in the county affected thereby and a majority vote is cast in favor thereof.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).

7-16-2328. Park fund to be maintained. All money raised by tax for park purposes or received by the board of park commissioners from the sale of hay, trees, or plants or from the use of or leasing of lands and facilities shall be paid into the county treasury. The county treasurer shall keep all such money in a separate fund to be known as the park fund.

History: En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part).

7-16-2329. Limitation on incurred liability. The board of park commissioners shall have no power to incur liability on behalf of the county in excess of money on hand in or taxes actually levied for said park fund.

History: En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part).

7-16-2330. Allowance of claims. (1) Subject to the provisions of subsection (2), the board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the county, liability for which shall have been incurred by said board.

(2) No claim shall be audited or paid until an itemized account of such claim, in writing and signed by the claimant or his or its authorized agent, shall have been filed in the office of the secretary of said board.

(3) No order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of $25 shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes of the secretary.

History: En. Sec. 5, Ch. 306, L. 1967; amd. Sec. 4, Ch. 290, L. 1971; R.C.M. 1947, 16-4805(part).

7-16-2331. Disbursement of money. All money paid out by the park commissioners under the provisions of this part shall be by warrant drawn upon the county treasury, which may be signed by the secretary and countersigned by the president or, in his absence, by the vice-president of the board of park commissioners. Upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with due notice and report being made to the board of county commissioners, payments so authorized may be made by warrant drawn upon the county treasury, signed by the chairman of the board of county commissioners and countersigned by the county clerk and recorder.

History: En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part); amd. Sec. 27, Ch. 253, L. 1979.

7-16-2332. Acceptance of federal aid authorized. The park commissioners shall have authority to accept grants or loans from the United States government, subject to agreements in conformance to federal laws and regulations relating thereto, notwithstanding any provision of this part or other state statutes to the contrary.

History: En. Sec. 7, Ch. 306, L. 1967; R.C.M. 1947, 16-4807.

Parts 24 through 40 reserved

Part 41

General Provisions Affecting Municipal Government

7-16-4101. Municipal authority to establish, alter, and maintain parks. The city or town council has power to lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve parks and to vacate the same.

History: En. Subd. 6, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.5, R.C.M. 1935; R.C.M. 1947, 11-906(part).

7-16-4102. Planting and protection of trees. The city or town council has power to provide for the planting of trees and the protection of the same.

History: En. Subd. 59, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.58, R.C.M. 1935; R.C.M. 1947, 11-961.

7-16-4103. Authorization to establish various cultural, social, and recreational facilities. (1) All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, may in their discretion procure, construct, establish, maintain, and operate swimming pools, skating rinks, playgrounds, civic centers, youth centers, and museums and defray the cost and expense of procuring, constructing, establishing, equipping, maintaining, and operating the same from the funds of said city or town raised for such purposes.

(2) Power and authority is hereby granted to the city or town council of all cities and towns incorporated under the laws of Montana to make and

pass all bylaws, ordinances, resolutions, rules, and orders necessary for the procurement, establishment, equipment, maintenance, regulation, and operation of swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combinations thereof, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using the same.

(3) Said city or town council is further authorized in its discretion to place any or all of said institutions under the control and management of the board of park commissioners.

History: (1)En. Sec. 1, Ch. 41, L. 1917; re-en. Sec. 5166, R.C.M. 1921; re-en. Sec. 5166, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1941; amd. Sec. 2, Ch. 71, L. 1945; Sec. 62-208, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 41, L. 1917; re-en. Sec. 5167, R.C.M. 1921; re-en. Sec. 5167, R.C.M. 1935; amd. Sec. 2, Ch. 60, L. 1941; amd. Sec. 3, Ch. 71, L. 1945; Sec. 62-209, R.C.M. 1947; R.C.M. 1947, 62-208, 62-209.

7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes. (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit thereof, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise swimming pools, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or combination thereof; and

(c) for furnishing and equipping the same.

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 3% of the value of the taxable property of the city or town as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. No money may be borrowed on bonds issued for the purchase of lands and improving the same for any such purpose until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor thereof.

History: (1), (2)En. Sec. 1, Ch. 55, L. 1909; re-en. Sec. 5159, R.C.M. 1921; amd. Sec. 1, Ch. 114, L. 1923; re-en. Sec. 5159, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1945; amd. Sec. 1, Ch. 64, L. 1947; Sec. 62-201, R.C.M. 1947; (3)En. Sec. 2, Ch. 55, L. 1909; re-en. Sec. 5160, R.C.M. 1921; re-en. Sec 5160, R.C.M. 1935; Sec. 62-202, R.C.M. 1947; R.C.M. 1947, 62-201, 62-202; amd. Sec. 28, Ch. 253, L. 1979.

7-16-4105. Authorization to levy tax for various cultural, social, and recreational facilities. For the purpose of procuring, equipping, and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combinations thereof, the council or commission in any city or town may levy, in addition to the levy for general municipal or administrative purposes, an amount not exceeding 7 mills on the dollar on the taxable value of the property to be taxed of the city or town.

History: En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part).

7-16-4106. Acquisition of property for athletic fields and civic stadiums. (1) Every city or town council shall have power to:

(a) acquire by gift, purchase, or condemnation lands for athletic fields and civic stadiums within or without the corporate limits of the municipality;

(b) establish and regulate such fields and civic stadiums;

(c) exercise municipal jurisdiction over the lands so acquired where such lands or any portion thereof are without the corporate limits of the municipality to the same extent as though they were within said corporate limits; and

(d) construct, maintain, and regulate athletic and civic stadiums thereon.

(2) The city or town councils are authorized to set aside or designate portions or tracts of land now owned by any municipality for the purpose of providing athletic fields and civic stadiums.

History: En. Sec. 1, Ch. 68, L. 1929; re-en. Sec. 5167.1, R.C.M. 1935; R.C.M. 1947, 62-210.

7-16-4107. Use of park funds for public recreation. (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

History: En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 29, Ch. 253, L. 1979.

7-16-4108. Operation of public recreation programs. (1) Any city, town, or school district or any board thereof, including any board of park commissioners, may operate such a program independently or may cooperate in its operation and conduct with any other body authorized hereby to conduct such a program in any manner upon which they may mutually agree, or it or they may delegate the operation of the program to a board of recreation created by any city, town, or school district or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all money appropriated for the purposes of such program may be expended by such board.

(2) Any corporation, board, or body designated in this section, given authority to operate and conduct a recreation program or given charge of such program, is authorized to employ directors and instructors of said recreational work and to conduct its activities on:

(a) property under its custody and management;

(b) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and

(c) private property, with the consent of its owners.

History: (1)En. Sec. 2, Ch. 71, L. 1939; Sec. 62-212, R.C.M. 1947; (2)En. Sec. 3, Ch. 71, L. 1939; Sec. 62-213, R.C.M. 1947; R.C.M. 1947, 62-212, 62-213(part).

7-16-4109. Gifts and bequests for public recreation. Any corporation, board, or body designated in 7-16-4108, given authority to operate and conduct a recreation program or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work.

History: **En. Sec. 3, Ch. 71, L. 1939; R.C.M. 1947, 62-213(part).**

7-16-4110. Establishment and maintenance of public baths. (1) All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, are hereby empowered and authorized to establish and maintain a public bathing place within said city or town.

(2) Power is hereby granted to the city or town council of all cities and towns incorporated under the laws of the state of Montana to make and pass all bylaws, ordinances, resolutions, and orders necessary for the establishment, maintenance, and regulation of a public bathing place within said city or town, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using said bathing place.

History: **En. Secs. 1, 2, Ch. 12, L. 1905; re-en. Secs. 3294, 3295, Rev. C. 1907; re-en. Secs. 5045, 5046, R.C.M. 1921; re-en. Secs. 5045, 5046, R.C.M. 1935; R.C.M. 1947, 11-1008(part), 11-1009.**

7-16-4111. Financing of public baths. To defray the cost and expense of maintaining the public bathing place authorized by 7-16-4110, a city or town may contract an indebtedness upon behalf of the city or town and upon the credit thereof by borrowing money or issuing bonds. No money may be borrowed and no bonds may be issued until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast therefor.

History: **En. Sec. 1, Ch. 12, L. 1905; re-en. Sec. 3294, Rev. C. 1907; re-en. Sec. 5045, R.C.M. 1921; re-en. Sec. 5045, R.C.M. 1935; R.C.M. 1947, 11-1008(part); amd. Sec. 30, Ch. 253, L. 1979.**

7-16-4112. Presentation of public band concerts. (1) Cities of the first, second, and third class, as defined by the laws of Montana, and incorporated towns may at their discretion provide public band concerts for the entertainment of their people and to pay therefor out of any money in a fund to be provided in accordance with the provisions of 7-16-4113.

(2) Said band concerts and entertainment shall be given at a place or places and at a time or times to be designated by the city council; provided, however, that said band concerts shall be given not more than twice each week. No band shall be employed in connection with the giving of said band concerts except one having its headquarters in the city or town in which said band concert is given.

History: **En. Sec. 1, Ch. 23, L. 1917; amd. Sec. 1, Ch. 167, L. 1921; re-en. Sec. 5047, R.C.M. 1921; re-en. Sec. 5047, R.C.M. 1935; R.C.M. 1947, 11-1010.**

7-16-4113. Tax levy for band concerts. For the purpose of providing band concerts, the council or other governing body in any city of the first, second, or third class or of any incorporated town may assess and levy, in addition to the levy for general municipal or administrative purposes, an amount not to exceed 1 mill on the dollar on the taxable value of the property of the city or town subject to taxation.

History: **En. Sec. 2, Ch. 167, L. 1921; re-en. Sec. 5048, R.C.M. 1921; re-en. Sec. 5048, R.C.M. 1935; amd. Sec. 23, Ch. 566, L. 1977; R.C.M. 1947, 11-1011.**

7-16-4114. Authorization to levy tax and establish fund for establishment and maintenance of day-care facilities. (1) The governing body of a city, town, or municipality may in its discretion establish a fund to establish and maintain licensed day-care centers and homes within the geographic boundaries of the governing body by a levy of up to 1 mill on each dollar of taxable property of said governing body. The tax levy shall be in addition to all other tax levies.

(2) The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine, provided that expenditures shall be made solely for the establishment, maintenance, and development of day-care centers and homes.

History: **En. 10-802.1 by Sec. 1, Ch. 392, L. 1973; R.C.M. 1947, 10-802.1.**

Part 42

Municipal Board of Park Commissioners

7-16-4201. Authorization for municipal board of park commissioners. (1) There may be created in all cities of the first and second class a board of park commissioners, whether such cities be a council form of government or city-manager form.

(2) Such board of park commissioners shall constitute a department of the city government with the powers provided in this part.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).**

7-16-4202. Composition of park board. The board of park commissioners shall be composed of the mayor or city manager of the city and six other persons to be appointed by the mayor or city manager of the city with the approval of the city council.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).**

7-16-4203. Qualifications of park commissioners. The six persons to be so appointed shall have the same qualifications for the office of park commissioner as are required by 7-4-4301 for the office of mayor.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part); amd. Sec. 31, Ch. 253, L. 1979.**

7-16-4204. Term of office. (1) Except as provided in subsection (2), the term of office of each park commissioner shall be 2 years from and after the first day of May of the year in which he is appointed and until his successor is appointed and qualified.

(2) Three of the commissioners first appointed shall hold office for the period of 1 year from and after the first day of May and until their successors are appointed and qualified.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).**

7-16-4205. Automatic vacation of office. Any park commissioner who shall refuse or neglect for a period of 3 consecutive months to attend the meetings of said board without leave of absence from said board or who shall fail for a period of 20 days from and after his appointment to qualify as provided in this part shall be deemed to have vacated his office, and thereupon, his successor may be appointed.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

7-16-4206. Compensation of park commissioners. No park commissioner shall receive compensation for his services rendered under the provisions of this part, but the actual and necessary expenses incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

7-16-4207. Oath of office. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe the oath provided by 2-16-211. The oath shall be filed in the office of the city clerk.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4208. Organization of park board. (1) On the first Monday in May in each year, said board of park commissioners shall meet and organize by electing one of their number president and one of their number vice-president, who shall hold their offices, respectively, for the term of 1 year.

(2) The city clerk shall be ex officio clerk of the board of park commissioners.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4209. Duties of board officers. (1) The president and, in his absence, the vice-president shall preside at all meetings of the board and shall countersign all warrants issued by the board and perform such other duties as shall be required and directed by the board.

(2) The city clerk, as ex officio clerk of the board of park commissioners, shall attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called the record of the board of park commissioners of the city of ..... It shall be the duty of the city clerk as such clerk of the board of park commissioners to keep an accurate account of all transactions of said board separate from other city accounts and to make and submit in writing to said board at the first meeting in January in each year a report under oath showing in detail all the receipts and disbursements made by the board during the year. The report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the city clerk and one in the office of the city treasurer. The city clerk shall perform such other services as the board shall require. In the absence of the clerk at any meeting held

by the board, it shall designate one of its number as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the clerk to be transcribed into the record book of said board.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).**

7-16-4210. Evidentiary effect of park board minutes. The minutes of said meeting contained in said record book, when approved by the board, shall be prima facie evidence of the matters and things therein recited in any court of this state.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).**

7-16-4211. Conduct of park board business. (1) Said board of park commissioners shall hold an annual meeting on the first Monday of May and a meeting at least once in each month in each year at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president or, in his absence, the vice-president, upon giving to each member of said board at least 24 hours' notice in writing of the time and place of holding such meeting.

(2) A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board.

History: **En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).**

7-16-4212. Control of conflict of interest. No park commissioner shall be interested in any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board.

History: **En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).**

7-16-4213 through 7-16-4220 reserved.

7-16-4221. Powers and duties of park board. (1) The board of park commissioners shall have the management and control of all parks belonging to the city and of all trees and other plants upon the streets, avenues, boulevards, and public places within the city and the right to designate the character and quality of all trees and plants planted in such parks, streets, avenues, boulevards, and public places.

(2) Said board of park commissioners shall have the following powers and be charged with the following duties:

(a) to lay out, establish, improve, and maintain parkways, drives, and walks in the parks of the city; to make plats thereof; to file the same in the office of the city clerk; and to determine when and what parks shall be opened to the public;

(b) to plant, cultivate, maintain, and improve all trees and other plants required to be planted, cultivated, and maintained in the parks belonging to the city and in the streets, avenues, boulevards, and public places in the city and for that purpose to establish and maintain nurseries for the growth of trees and plants;

(c) to pay all obligations authorized to be incurred by the provisions of this part;

(d) to exercise all other powers incident to the duties enjoined by the provisions of this part.

History: En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(part).

7-16-4222. Rules to implement part. (1) The board of park commissioners shall have the following powers and be charged with the following duties:

(a) to make all rules necessary or convenient to protect and promote the growth of trees and plants in parks, streets, avenues, alleys, boulevards, and public places under the care and control of said board and for the protection of all birds inhabiting, frequenting, or nesting in such parks, streets, avenues, boulevards, and public places;

(b) to make all rules for the use of parks by the public; and

(c) to provide penalties for the violation of such rules.

(2) The rules authorized by this section shall have the force of city ordinances and be enforced in like manner as ordinances of the city are enforced.

History: En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(3).

7-16-4223. Leasing of municipal land for nonpark purposes. The board of park commissioners shall have the power and be charged with the duty to lease all lands owned by the city heretofore acquired for parks, whether within or without the city, which, in the judgment of the board, it shall not be advisable to improve as parks, upon such terms and conditions as the board shall deem to be for the best interests of the city. Such lands shall not be leased for a longer term at any one time than 5 years and not for a longer time than 1 year without the concurrence of two-thirds of the entire board of park commissioners.

History: En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(5).

7-16-4224. Power of park board to employ persons and to make contracts. (1) The board of park commissioners shall have the following powers and be charged with the following duties:

(a) to employ and discharge workmen, laborers, engineers, foresters, and others and to fix their compensation, which shall not be less than the union scale of wages in force in each individual city of the first class; and

(b) to make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon said board by this part.

(2) All contracts made by said board shall be in the name of the city and shall be signed by the city clerk and by the president or, in his absence, by the vice-president of said board.

(3) No order or resolution authorizing the making of any contract shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes by the clerk.

History: (1)En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; Sec. 62-204, R.C.M. 1947; (2)En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; Sec. 62-206,

R.C.M. 1947; (3)En. Sec. 6, p. 78, L. 1901; re-en. Sec. 3323, Rev. C. 1907; re-en. Sec. 5165, R.C.M. 1921; re-en. Sec. 5165, R.C.M. 1935; Sec. 62-207, R.C.M. 1947; R.C.M. 1947, 62-204(part), 62-206(part), 62-207(part).

7-16-4225. Park fund to be maintained. All money raised by tax for park purposes or received by the board of park commissioners for the sale of hay, trees, or plants; from the leasing of park lands; or from any other source shall be paid into the city treasury. The city treasurer shall keep all such money in a separate fund to be known as the park fund.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part).

7-16-4226. Limitation on incurred liability. The board of park commissioners shall have no power to incur liability on behalf of the city in excess of money on hand in or taxes actually levied for said park fund.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part).

7-16-4227. Allowance of claims. (1) Subject to the provisions of subsection (2), said board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the city, liability for which shall have been incurred by said board.

(2) No claim shall be audited or paid until an itemized account of such claim, in writing and verified by the oath of the claimant or his or its authorized agent, shall have been filed in the office of the clerk of said board.

(3) No order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of $25 shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes by the clerk.

History: En. Sec. 6, p. 78, L. 1901; re-en. Sec. 3323, Rev. C. 1907; re-en. Sec. 5165, R.C.M. 1921; re-en. Sec. 5165, R.C.M. 1935; R.C.M. 1947, 62-207(part).

7-16-4228. Disbursement of money. All money paid out by the park commissioners under the provisions of this part shall be by warrant drawn upon the city treasury, which shall be signed by the city clerk and countersigned by the president or, in his absence, by the vice-president of the board of park commissioners.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part); amd. Sec. 32, Ch. 253, L. 1979.

Part 43

Municipal Winter Work Program

7-16-4301. Definitions. As used in this part, the following definitions apply:

(1) "Winter work program" means a program to promote and encourage the accomplishment of work that would alleviate the rolls of the unemployed during the winter months.

(2) "Winter work committee" is a local committee appointed to effect the program.

History: En. Sec. 1, Ch. 68, L. 1965; R.C.M. 1947, 41-1901.

7-16-4302. Authorization to appoint winter work committee. The mayor of any municipality may appoint a winter work committee composed of at least five members.

History: En. Sec. 2, Ch. 68, L. 1965; R.C.M. 1947, 41-1902(part).

7-16-4303. Composition of committee. The members of the winter work committee shall be from various economic groups, including labor, industry, business, welfare, and the news media. In municipalities where the economic groups are represented by organizations, the mayor shall give notice to each organization that he is going to make the appointments and shall set a date by which names must be submitted. On the date set for submittal, he shall select one member from each of the economic groups.

History: En. Sec. 2, Ch. 68, L. 1965; R.C.M. 1947, 41-1902(part).

7-16-4304. Terms of committee members. Original appointments shall be for 5, 4, 3, 2, and 1 years. The original terms shall be determined by lot. After the original appointments have expired, terms shall be for 5 years.

History: En. Sec. 3, Ch. 68, L. 1965; R.C.M. 1947, 41-1903(part).

7-16-4305. Compensation of committee members. There shall be no compensation for service on this committee.

History: En. Sec. 3, Ch. 68, L. 1965; R.C.M. 1947, 41-1903(part).

7-16-4306. Meetings and organization of committee. The committee shall meet within 10 days of appointment by the mayor. They shall select a chairman and a secretary and other necessary officers. Thereafter the committee shall meet at least quarterly and at such other times as may be necessary, convenient, or desired.

History: En. Sec. 4, Ch. 68, L. 1965; R.C.M. 1947, 41-1904.

7-16-4307. Promotion of winter work program. The committee shall work through public service advertising and through public relations to promote the winter work program.

History: En. Sec. 5, Ch. 68, L. 1965; R.C.M. 1947, 41-1905.

7-16-4308. State employment service to cooperate. The employees of free public employment offices of the Montana state employment service shall cooperate with the committee.

History: En. Sec. 6, Ch. 68, L. 1965; R.C.M. 1947, 41-1906.

7-16-4309. Filing and use of committee minutes. Minutes of the meetings of the committee shall be filed by the secretary of the committee with the mayor of the municipality, who shall keep them as other public records. Members of the legislature may use these minutes to determine the employment problems of the municipalities involved.

History: En. Sec. 7, Ch. 68, L. 1965; R.C.M. 1947, 41-1907.

CHAPTERS 17 THROUGH 20

RESERVED

CHAPTER 21

BUSINESS, AGRICULTURE, AND LIVESTOCK SERVICES AND REGULATION

Parts 1 through 20 reserved

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7-21-2103. Determination of persons required to obtain licenses — classes of licenses.
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Part 25 — Licensing of Hucksters

7-21-2501. Definition of term huckster.
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Parts 1 through 20 reserved

Part 21

General County Licensing Authority

7-21-2101. General licensing power of counties. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to grant such licenses as are provided by law.

History: En. Subd. 17, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.16, R.C.M. 1935; R.C.M. 1947, 16-1019(part).

7-21-2102. Procedure to supply license blanks. (1) The county clerk shall prepare and have printed such blank licenses as may be required, and after affixing his official seal thereto, he shall deliver the same to the county treasurer. At the time of such delivery, he shall charge the county treasurer therewith by appropriate entry in his records showing the amount, numbers, and classes of licenses so furnished.

(2) As licenses are issued and accounted for by the county treasurer, the county clerk shall credit such account with all licenses so issued and accounted for, so that the account will at all times show the number of licenses furnished the treasurer, their numbers, the number issued or canceled, and the number remaining in the hands of the county treasurer.

(3) On the first Monday in each month, the county treasurer must return to the county clerk all licenses unsold and show that he has paid into the county treasury all money collected for licenses sold during the preceding month.

History: (1), (2)En. Sec. 4040, Pol. C. 1895; re-en. Sec. 2746, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1909; re-en. Sec. 2410, R.C.M. 1921; Cal. Pol. C. Sec. 3356; amd. Sec. 1, Ch. 54, L. 1933; re-en. Sec. 2410, R.C.M. 1935; Sec. 84-2701, R.C.M. 1947; (3)En. Sec. 4047, Pol. C. 1895; re-en. Sec. 2753, Rev. C. 1907; re-en. Sec. 2417, R.C.M. 1921; Cal. Pol. C. Sec. 3363; re-en. Sec. 2417, R.C.M. 1935; Sec. 84-2706, R.C.M. 1947; R.C.M. 1947, 84-2701, 84-2706.

7-21-2103. Determination of persons required to obtain licenses — classes of licenses. (1) The county treasurer must make diligent inquiry as to all persons in his county liable to pay a license fee as provided in this part.

(2) Whenever the licenses are divided into classes, the county treasurer must require each person to state, under oath or affirmation, the probable amount of business which he, the firm of which he is a member or for which he is an agent or attorney, or the association or corporation of which he is the president, secretary, or managing agent will do in the succeeding 3 months. Thereupon such person, agent, president, secretary, or other officer must procure a license from the county treasurer for the term desired and the proper class. In all cases where an underestimate has been made by the party applying, the party making the underestimate or the company he represented is required to pay double the sum otherwise required for a license for the next quarter.

History: En. Sec. 4045, Pol. C. 1895; re-en. Sec. 2751, Rev. C. 1907; re-en. Sec. 2415, R.C.M. 1921; Cal. Pol. C. Sec. 3361; re-en. Sec. 2415, R.C.M. 1935; R.C.M. 1947, 84-2704; amd. Sec. 1, Ch. 249, L. 1979.

7-21-2104. Lien arising from license. (1) All property held or used in any trade, occupation, or profession for which a license is required by the provisions of this part is liable for such license and subject to a lien for the amount thereof. This lien has precedence of any other lien, claim, or demand.

(2) If any person fails or refuses to procure a license before the transaction of the business specified, the county treasurer must seize such property or any other property belonging to such person and sell the same in the manner provided in 15-17-901 through 15-17-903.

History: En. Sec. 4049, Pol. C. 1895; re-en. Sec. 2755, Rev. C. 1907; re-en. Sec. 2419, R.C.M. 1921; re-en. Sec. 2419, R.C.M. 1935; R.C.M. 1947, 84-2707.

7-21-2105. Disbursement of license fees. (1) Unless the disposition is otherwise provided for, all money collected by the county treasurer for licenses issued by the county under this chapter must be paid into the treasury of the county.

(2) Unless otherwise provided, the county treasurer shall retain 50% thereof for the use of the county, pay over 45% thereof to the state treasurer for the use of the general fund of the state, and pay over 5% thereof to the state treasurer for deposit in the earmarked revenue fund to be used by the livestock commission for predatory animal control.

History: En. Sec. 1, Ch. 67, L. 1905; re-en. Sec. 2756, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1921 re-en. Sec. 2420, R.C.M. 1921; re-en. Sec. 2420, R.C.M. 1935; amd. Sec. 104, Ch. 147, L. 1963 R.C.M. 1947, 84-2708; amd. Sec. 2, Ch. 249, L. 1979.

7-21-2106 through 7-21-2110 reserved.

7-21-2111. General license requirements. (1) A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the same.

(2) The license authorizes the party obtaining the same to transact the business described in such license in his town, city, or particular locality in the county.

(3) Separate licenses must be obtained for each branch establishment o separate house of business located in the same county.

History: En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907; re-en. Sec. 2413, R.C.M 1921; Cal. Pol. C. Sec. 3359; re-en. Sec. 2413, R.C.M. 1935; R.C.M. 1947, 84-2702(part).

7-21-2112. Compliance with municipal regulation also required. No license issued under this part authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes unless such person, in addition to the license provided by this part, also procures the license required by the ordinances or orders of such city or town.

History: En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907; re-en. Sec. 2413, R.C.M. 1921; Cal. Pol. C. Sec. 3359; re-en. Sec. 2413, R.C.M. 1935; R.C.M. 1947, 84-2702(part).

7-21-2113. Effect of failure to comply with licensing requirements. Every person who commences or carries on a business, trade, profession, or calling, for the transaction or carrying on of which a license is required by the provisions of any of the license laws of Montana, without taking out or procuring such license is guilty of a misdemeanor and shall, unless specific punishment is prescribed by some other law of this state, be punishable as in the case of other misdemeanors and, in addition thereto, shall be liable to a penalty of 10% of the amount of said license. This penalty must be added to the amount of said license and collected by the county treasurer at the time of the collection of the license, but the payment of said penalty shall in no event relieve any person from prosecution for such misdemeanor.

History: En. Sec. 6, p. 200, L. 1897; re-en. Sec. 2780, Rev. C. 1907; amd. Sec. 1, Ch. 25, L. 1921; re-en. Sec. 2443, R.C.M. 1921; re-en. Sec. 2443, R.C.M. 1935; R.C.M. 1947, 84-3209.

7-21-2114. Investigation of possible licensing violations. It shall be the duty of the board of county commissioners or the state examiner, when examining the treasurer's report, to investigate if any persons are doing business in the county without a license or if the amount of the license is sufficient. In either event the treasurer shall be officially notified.

History: En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part).

7-21-2115. Liability of county treasurer for licensing violations. Upon the notification of the treasurer as provided in 7-21-2114, the treasurer shall be personally liable for such license or increase unless he promptly proceeds under 7-21-2104 or 7-21-2116 to collect the same.

History: En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part).

7-21-2116. Enforcement of licensing requirements. (1) The county treasurer must direct suit in the name of the state of Montana as plaintiff to be brought for the recovery of the license tax, against any person required to take out a license who fails, neglects, or refuses to take out such license or who carries on or attempts to carry on business without such license. In such case, either the treasurer or the county attorney must make the necessary affidavit for the writ of attachment and such writ of attachment may issue without any bonds being given on behalf of the plaintiff.

(2) In case of a recovery by the plaintiff, $15 damages must be added to the judgment and costs to be collected from the defendant.

History: En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part).

7-21-2117. Defenses in actions related to licensing violations. Upon the trial of any action authorized by this part, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it, but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with damages and costs.

History: En. Sec. 4046, Pol. C. 1895; re-en. Sec. 2752, Rev. C. 1907; re-en. Sec. 2416, R.C.M. 1921; Cal. Pol. C. Sec. 3362; re-en. Sec. 2416, R.C.M. 1935; R.C.M. 1947, 84-2705.

Part 22

Miscellaneous Licenses

7-21-2201. Licensing of ferries. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to grant licenses for keeping ferries.

History: En. Subd. 17, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.16, R.C.M. 1935; R.C.M. 1947, 16-1019(part).

7-21-2202. License required to do business as itinerant vendor of drugs — fee. Any itinerant vendor of any drug, poison, ointment, or appliance of any kind intended for treatment of any disease or injury who shall, by writing, printing, or any other method, publicly profess to cure or treat disease, injury, or deformity by any drug, nostrum, manipulation, or other expedient shall pay a license of $50 per annum in each county in which he may offer to do business or according to the usual laws in force for that purpose.

History: En. Sec. 655, Pol. C. 1895; re-en. Sec. 1637, Rev. C. 1907; re-en. Sec. 2429, R.C.M. 1921; re-en. Sec. 2429, R.C.M. 1935; R.C.M. 1947, 84-3101.

7-21-2203. Billiard, pool, or bagatelle table license. (1) Each proprietor of a billiard, pool, or bagatelle table not kept exclusively for family use must obtain a license, for which the county treasurer must require payment as follows: $3.70 for each table per quarter.

(2) No license must be granted for a term less than 3 months.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2204. Bowling alley license. (1) Each proprietor of a bowling alley must obtain a license, for which the county treasurer must require payment as follows: $5 for each alley per quarter.

(2) No license must be granted for a term less than 3 months.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2205. Theater licenses. (1) Except as provided in subsection (2), the manager or lessee of every theater not a variety or concert theater must obtain a license, for which the county treasurer must require payment as follows: $100 per annum.

(2) Notwithstanding the provisions of subsection (1), the manager or lessee of every theater not a variety or concert theater in towns of a population of 3,500 or less and in cases where no monthly license is paid must obtain a license, for which the county treasurer must require payment as follows:

(a) $2 for each single performance;

(b) $3 for each single exhibition of an opera or concert singer not exhibited in any theater where a yearly license is paid;

(c) $5 for each single performance when not in a theater where a yearly license is paid, of minstrels, legerdemain, or shows not provided for in this subsection.

(3) The manager or lessee of each variety or concert theater (whether an admittance fee is charged or not) must obtain a license, for which the county treasurer must require payment as follows: $75 per month.

(4) The provisions of this section are subject to the exemptions from licensing provided by 7-21-2207.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2206. Traveling show licenses. (1) Subject to the provisions of subsection (2), a license must be obtained for every traveling show, such as circuses, menageries, sideshows, carnivals, wild west shows, animal shows, or tent shows, exhibiting in tents, open air, or other than a regular theater, for which the county treasurer must require payment as follows:

(a) $75 per day for traveling in less than 25 railroad cars;

(b) $200 per day for traveling in over 25 railroad cars;

(c) $25 per day for traveling on highways in 10 trucks or less;

(d) $50 per day for traveling on highways in 11 to 25 trucks;

(e) $75 per day for traveling on highways in more than 25 trucks.

(2) The county treasurer shall not issue any license for circuses, sideshows, carnivals, menageries, wild west shows, animal shows, or tent shows to be held or performed within a period of 30 days prior to or during the holding of any local, county, district, or state fair or rodeo without first obtaining the written consent of the board of county commissioners of the county where application is made for such license to operate such shows.

(3) The provisions of this section are subject to the exemptions from licensing provided by 7-21-2207.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2207. Exemption from certain entertainment license requirements. No license must be collected from any amateur exhibition or concert for school or charitable or religious purposes; from any county, district, or state agricultural fair; from rodeo associations; or from any veterans' organization not conducted for private gain.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2208. Pawnbroker license. A license must be obtained for each pawnbroker, for which the county treasurer must require payment as follows: $55 per quarter.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2209. Intelligence office license. A license must be obtained by each keeper of an intelligence office, for which the county treasurer must require payment as follows: $10 per quarter.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2210. Shooting gallery license. A license must be obtained by each keeper of a shooting gallery for gain, for which the county treasurer must require payment as follows: $15 per quarter.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2211. Railway warehouse license. Each railway company acting in the capacity of a warehouse for the purpose of storing and distributing goods, other than in the capacity of a common carrier, shall pay, in each county in which the business is carried on, a license of $10 per quarter.

History: En. Sec. 1, Ch. 22, L. 1907; Sec. 2763, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1917; re-en. Sec. 2435, R.C.M. 1921; amd. Sec. 5, Ch. 28, Ex. L. 1933; re-en. Sec. 2435, R.C.M. 1935; R.C.M. 1947, 84-3202; amd. Sec. 3, Ch. 249, L. 1979.

7-21-2212. Soft drink manufacturing license. Every manufacturer of nonintoxicating beverages, pop, soda waters, or other light drinks put up in bottles or other containers shall pay a license of:

(1) $60 semiannually in all cities having a population of 10,000 people or over;

(2) $40 semiannually in all cities or towns of more than 5,000 and less than 10,000 in population; and

(3) $25 semiannually in all cities or towns with a population of less than 5,000.

History: En. Sec. 3, p. 199, L. 1897; re-en. Sec. 2770, Rev. C. 1907; amd. Sec. 1, Ch. 26, L. 1921; re-en. Sec. 2436, R.C.M. 1921; re-en. Sec. 2436, R.C.M. 1935; R.C.M. 1947, 84-3203.

7-21-2213. Malt manufacturer's license. Every manufacturer of malt, when not engaged in the manufacture of malt liquors in Montana, must pay a license of $100 per annum.

History: En. Sec. 5, p. 200, L. 1897; re-en. Sec. 2779, Rev. C. 1907; re-en. Sec. 2442, R.C.M. 1921; re-en. Sec. 2442, R.C.M. 1935; R.C.M. 1947, 84-3208.

7-21-2214. Skating rink and merry-go-round license. Every keeper of a roller- or ice-skating rink or merry-go-round must procure a license and pay therefor the sum of:

(1) $15 per quarter in cities or towns of 3,000 people and upward;

(2) $10 per quarter in towns of 1,000 and less than 3,000; and

(3) $5 per quarter in towns of less than 1,000 inhabitants.

History: En. Sec. 4077, Pol. C. 1895; re-en. Sec. 2775, Rev. C. 1907; re-en. Sec. 2438, R.C.M. 1921; re-en. Sec. 2438, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1945; R.C.M. 1947, 84-3204.

7-21-2215. Laundry license. (1) Except as provided in subsection (2), every person engaged in the laundry business, other than the steam laundry business, shall pay a license of $10 per quarter.

(2) This section shall not apply to persons engaged in a laundry business where not more than two persons are engaged or employed or kept at work.

(3) The license obtained under subsection (1) shall be for one place of business only.

History: En. Sec. 4, p. 200, L. 1897; re-en. Sec. 2776, Rev. C. 1907; re-en. Sec. 2440, R.C.M. 1921; re-en. Sec. 2440, R.C.M. 1935; amd. Sec. 43, Ch. 535, L. 1975; R.C.M. 1947, 84-3206.

7-21-2216. Repealed. Sec. 1, Ch. 161, L. 1979.

Part 23

Licensing of Itinerant Vendors

7-21-2301. Definitions. (1) A "consumer" is one who uses and by using destroys the value of the article purchased.

(2) Within the meaning of this part, an "itinerant vendor" is any person engaged or employed in the business of retailing to consumers by going from consumer to consumer, either on the streets or to their places of residence or employment, and there soliciting, selling, or offering to sell or exhibiting for sale (by sample, by catalogue, or otherwise) or taking orders for future delivery of any goods, wares, or merchandise or for services to be performed in the future.

History: En. Sec. 1, Ch. 184, L. 1925; re-en. Sec. 2429.16, R.C.M. 1935; R.C.M. 1947, 84-3102(part).

7-21-2302. Scope of part. (1) This part shall in no way affect any person, firm, partnership, or corporation with a commercial rating who maintains a permanent place of business in Montana.

(2) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part, provided that such municipality shall not impose any license fees in excess of twice the amount provided herein for county license fees.

(3) Nothing contained in this part is intended to operate so as to interfere with the power of the United States to regulate commerce between the states, as such power is defined by the supreme court of the United States.

History: (1)En. Sec. 1, Ch. 184, L. 1925; re-en. Sec. 2429.16, R.C.M. 1935; Sec. 84-3102, R.C.M. 1947; (2), (3)En. Sec. 8, Ch. 184, L. 1925; re-en. Sec. 2429.23, R.C.M. 1935; Sec. 84-3109, R.C.M. 1947; R.C.M. 1947, 84-3102(part), 84-3109.

7-21-2303. License required to do business as itinerant vendor — fee. For the purpose of defraying the expenses of regulation under this part, every itinerant vendor desiring to do business in any county of this state must, before commencing such business, pay to the county treasurer of such county the sum of $15 for a license to conduct such business for a period of 1 year from the date such license is issued.

History: En. Sec. 2, Ch. 184, L. 1925; re-en. Sec. 2429.17, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1937; R.C.M. 1947, 84-3103.

7-21-2304. Nontransferability of license. The license shall be nontransferable and shall have printed across the face thereof in bold type the words "not transferable".

History: En. Sec. 5, Ch. 184, L. 1925; re-en. Sec. 2429.20, R.C.M. 1935; R.C.M. 1947, 84-3106(part).

7-21-2305. Application for itinerant vendor license. (1) Every itinerant vendor desiring to do business in any county of this state must, before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing, subscribed and sworn to by such applicant before an officer in this state authorized to take oaths.

(2) The application shall set forth:

(a) name of applicant;

(b) his place of permanent residence;

(c) his local headquarters, if any;

(d) time of his arrival in the county;

(e) county from which last license, if any, received;

(f) whether acting as principal, agent, or employee;

(g) if acting as agent or employee, the name and place of business of his principal or employer;

(h) brief descriptive list of articles to be offered for sale or services to be performed;

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery.

(3) If the applicant is acting as an agent, the principal's acknowledgment of such agency must accompany the application as part of the application.

(4) At the time of filing the application, such itinerant vendor must accompany the application with the sum specified in 7-21-2303 as a license fee.

History: En. Sec. 3, Ch. 184, L. 1925; re-en. Sec. 2429.18, R.C.M. 1935; R.C.M. 1947, 84-3104.

7-21-2306. Bond required if deposit taken on orders for future delivery. (1) Every application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits, or guarantees thereon under the terms of 7-21-2301 through 7-21-2305 shall be accompanied by a bond in the penal sum of $250 to said county treasurer.

(2) (a) The bond shall be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county.

(b) In lieu of a bond meeting the requirements of subsection (2)(a), the application may be accompanied by a cash bond of equal amount.

(3) The bond shall be approved by said county treasurer and conditioned upon making of final delivery of the goods ordered or the services to be rendered in accordance with the terms of such order or failing therein, that the money advanced by his customers be refunded.

(4) Such bond shall remain in full force and effect for a period of 6 months after the expiration of any such license and shall be held to assure only business transacted under the authority of the license issued pursuant to the application which such bond accompanied.

History: En. Sec. 4, Ch. 184, L. 1925; re-en. Sec. 2429.19, R.C.M. 1935; R.C.M. 1947, 84-3105(part).

7-21-2307. Right of aggrieved purchaser. Any person aggrieved by the action or misrepresentation of any such itinerant vendor shall have a right of action on the bond for the recovery of his money advanced or damages and costs.

History: En. Sec. 4, Ch. 184, L. 1925; re-en. Sec. 2429.19, R.C.M. 1935; R.C.M. 1947, 84-3105(part).

7-21-2308. Processing of application — issuance of license. (1) Upon filing of the application prescribed in 7-21-2305 or the filing of such application and the bond prescribed in 7-21-2306, in proper form, and upon the payment to the county treasurer of the sum required by 7-21-2303, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in such application in the county in which such license is so issued for a period of 90 days from the date of such license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county. The county clerk and recorder shall file the same in his office and keep an appropriate index thereof which shall show the date filed, the name of the applicant, and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 5, Ch. 184, L. 1925; re-en. Sec. 2429.20, R.C.M. 1935; R.C.M. 1947, 84-3106(part).

7-21-2309. License to be displayed upon demand. (1) Every such itinerant vendor doing business under the provisions of this part must upon demand of any person exhibit his license and permit the same to then and there be read by the person making such demand.

(2) Any such itinerant vendor who shall willfully refuse or fail to exhibit his license as above provided is guilty of a misdemeanor and shall be fined not less than $100 or more than $250 for each offense.

History: En. Sec. 6, Ch. 184, L. 1925; re-en. Sec. 2429.21, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1937; R.C.M. 1947, 84-3107.

7-21-2310. Effect of failure to comply with licensing requirements. Every itinerant vendor, as herein defined, doing business without first obtaining a license as required by this part is guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 7, Ch. 184, L. 1925; re-en. Sec. 2429.22, R.C.M. 1935; R.C.M. 1947, 84-3108.

Part 24

Licensing of Transient Retail Merchants

7-21-2401. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Temporary premises" means any hotel, roominghouse, storeroom, building or part of any building, tent, vacant lot, freight station, railroad car, automobile, truck, trailer or trailer house, or public or quasi-public place, temporarily occupied for such business as described in subsection (2).

(2) "Transient retail merchant" means every person, firm, or corporation acting for himself or itself or representing any other person, firm, or corporation who or which brings into temporary premises a stock of goods, wares, articles of merchandise, notions, or other articles of trade and who or which solicits, sells, offers to sell, or exhibits for sale such stock of goods, wares, articles of merchandise, notions, or other articles of trade at retail.

History: En. Sec. 1, Ch. 182, L. 1925; re-en. Sec. 2429.1, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1951; R.C.M. 1947, 84-3701(part); amd. Sec. 4, Ch. 249, L. 1979.

7-21-2402. Applicability of term transient retail merchant. The definition of transient retail merchant shall continue to apply until such person, firm, or corporation shall be continuously engaged at such particular place in the county for a period of 1 year.

History: En. Sec. 1, Ch. 182, L. 1925; re-en. Sec. 2429.1, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1951; R.C.M. 1947, 84-3701(part).

7-21-2403. Scope of part. (1) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part.

(2) The provisions of this part shall not apply to duly constituted city markets operated by authority of any city or town.

(3) Nothing contained in this part is intended to operate so as to interfere with the power of the United States to regulate commerce between the states, as such power is defined by the supreme court of the United States.

History: En. Sec. 8, Ch. 182, L. 1925; re-en. Sec. 2429.8, R.C.M. 1935; R.C.M. 1947, 84-3708.

7-21-2404. License required to do business as transient retail merchant — fee. The amount to be paid for the license to conduct the business of a transient retail merchant shall be the sum of $5 for each week or fraction thereof, to be paid in advance to the county treasurer of the county in which such business is conducted.

History: En. Sec. 2, Ch. 182, L. 1925; re-en. Sec. 2429.2, R.C.M. 1935; R.C.M. 1947, 84-3702.

7-21-2405. Nontransferability of license. Such license shall be nontransferable and shall have printed across the face thereof in bold type the words "Not Transferable".

History: En. Sec. 5, Ch. 182, L. 1925; re-en. Sec. 2429.5, R.C.M. 1935; R.C.M. 1947, 84-3705(part).

7-21-2406. Application for transient retail merchant license. (1) Every transient retail merchant desiring to do business in any county of this state must, before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing, subscribed and sworn to by such applicant before an officer in this state authorized to take oaths.

(2) The application shall set forth:

(a) name of applicant;

(b) his place of permanent residence;

(c) his local headquarters, if any;

(d) time of his arrival in the county;

(e) county from which last license, if any, received;

(f) whether acting as principal, agent, or employee;

(g) if acting as agent or employee, the name and place of business of his principal or employer;

(h) brief descriptive list of articles to be offered for sale or services to be performed;

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery;

(j) the number of weeks for which license is requested.

(3) If the applicant is acting as an agent, the principal's acknowledgment of such agency must accompany the application as part of the application.

(4) At the time of filing the application, such transient retail merchant must accompany the application with the sum specified in 7-21-2404 as a license fee, except as provided in 7-21-2407.

History: En. Sec. 3, Ch. 182, L. 1925; re-en. Sec. 2429.3, R.C.M. 1935; R.C.M. 1947, 84-3703.

7-21-2407. Bond in lieu of license fee. (1) In lieu of the license fee prescribed in 7-21-2404, every transient retail merchant who files with the application required in 7-21-2406 an affidavit indicating bona fide intention to become a permanent merchant and continue in business for a period longer than 1 year shall, upon filing and approval of the bond provided for in this section, receive from the county treasurer a license permitting the conduct of such business for a period of 1 year.

(2) Such bond shall be a surety bond in the penal sum of $1,000 to said county treasurer.

(3) (a) The bond shall be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county.

(b) In lieu of a bond meeting the requirements of subsection (3)(a), the bond may be a cash bond of equal amount.

(4) The bond shall be approved by said county treasurer and conditioned upon the performance of the intention to become a permanent merchant and continue in business for a period longer than 1 year and to insure the payment of license fees for the period such business is actually conducted if not in fact a bona fide permanent business. The bond shall be further conditioned upon the delivery of goods ordered or sold in accordance with the terms of such order or sale.

(5) Such bond shall remain in full force and effect for a period of 6 months after the expiration of the 1-year period.

History: En. Sec. 4, Ch. 182, L. 1925; re-en. Sec. 2429.4, R.C.M. 1935; R.C.M. 1947, 84-3704(part).

7-21-2408. Right of aggrieved purchaser. Any person aggrieved by any action or misrepresentation of any such transient retail merchant shall have a right of action on the bond provided for in 7-21-2407 for the recovery of his money advanced or damages and costs.

History: En. Sec. 4, Ch. 182, L. 1925; re-en. Sec. 2429.4, R.C.M. 1935; R.C.M. 1947, 84-3704(part).

7-21-2409. Processing of application — issuance of license. (1) (a) Upon filing of the application prescribed in 7-21-2406 and the payment of the fee prescribed in 7-21-2404, the county treasurer shall issue and deliver to the applicant, in the county, a license to carry on the business described in such application in the county in which such license is so issued for the period for which such license is requested.

(b) Upon filing of the application prescribed in 7-21-2406 and the bond prescribed in 7-21-2407, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in such application in the county in which such license is so issued for a period of 1 year from the date of such license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and the duration thereof and shall immediately file such application with the county clerk and recorder of his county. The county clerk and recorder shall file the same in his office and keep an appropriate index thereof which shall show the date filed, the name of applicant, and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 5, Ch. 182, L. 1925; re-en. Sec. 2429.5, R.C.M. 1935; R.C.M. 1947, 84-3705(part).

7-21-2410. License to be displayed in place of business. (1) Every transient retail merchant doing business under the provisions of this part shall at all times keep said license conspicuously posted in said place of business.

(2) Any such transient retail merchant who shall fail to post and keep posted his license as provided above is guilty of a misdemeanor and shall be fined not less than $10 or more than $25 for each offense.

History: En. Sec. 6, Ch. 182, L. 1925; re-en. Sec. 2429.6, R.C.M. 1935; R.C.M. 1947, 84-3706.

7-21-2411. Effect of failure to comply with licensing requirements. Every transient retail merchant, as herein defined, doing business without first obtaining a license so required by this part is guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 7, Ch. 182, L. 1925; re-en. Sec. 2429.7, R.C.M. 1935; R.C.M. 1947, 84-3707.

Part 25

Licensing of Hucksters

7-21-2501. Definition of term huckster. Within the meaning of this part, any person engaged or employed in the business of buying and selling farm products who disposes of such products by selling them at retail to consumers by going from house to house is a huckster.

History: En. Sec. 1, Ch. 183, L. 1925; re-en. Sec. 2429.9, R.C.M. 1935; R.C.M. 1947, 84-2901.

7-21-2502. Scope of part. (1) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part.

(2) Nothing in this part shall be construed so as in any manner to impair, abridge, or interfere with the right of a grower or producer of farm products to dispose of such products grown or produced by him.

History: En. Sec. 7, Ch. 183, L. 1925; re-en. Sec. 2429.15, R.C.M. 1935; R.C.M. 1947, 84-2907.

7-21-2503. License required to do business as huckster — fee. Every huckster desiring to do business in any county of this state must, before commencing such business, pay to the county treasurer of such county the sum of $15 for a license to conduct such business for a period of 6 months from the date such license is issued.

History: En. Sec. 2, Ch. 183, L. 1925; re-en. Sec. 2429.10, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1937; R.C.M. 1947, 84-2902.

7-21-2504. Nontransferability of license. The license required by 7-21-2503 shall be nontransferable and shall have printed across the face thereof in bold type the words "not transferable".

History: En. Sec. 4, Ch. 183, L. 1925; re-en. Sec. 2429.12, R.C.M. 1935; R.C.M. 1947, 84-2904(part).

7-21-2505. Application for huckster license. (1) Every huckster desiring to do business in any county of this state must, before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing.

(2) The application shall set forth:

(a) name of applicant;

(b) his place of permanent residence;

(c) whether acting as principal, agent, or employee;

(d) if acting as agent or employee, the name and place of business of his principal or employer.

(3) At the time of filing the application, such huckster must accompany the application with the sum specified in 7-21-2503 as a license fee.

History: En. Sec. 3, Ch. 183, L. 1925; re-en. Sec. 2429.11, R.C.M. 1935; R.C.M. 1947, 84-2903.

7-21-2506. Processing of application — issuance of license. (1) Upon filing of the application specified in 7-21-2505 and upon the payment to the county treasurer of the sum specified in 7-21-2503, the county treasurer shall issue and deliver to the applicant a license to carry on the business of a huckster for a period of 6 months from the date of such license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county. The county clerk and recorder shall file the same in his office and keep an appropriate index thereof which shall show the date filed, the name of the applicant, and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 4, Ch. 183, L. 1925; re-en. Sec. 2429.12, R.C.M. 1935; R.C.M. 1947, 84-2904(part).

7-21-2507. License to be displayed upon demand. (1) Every such huckster doing business under the provisions of this part must, upon demand of any interested person, exhibit his license and permit the same to then and there be read by the person making such demand.

(2) Any such huckster who shall refuse or fail to exhibit his license as provided above is guilty of a misdemeanor and shall be fined not less than $10 or more than $25.

History: En. Sec. 5, Ch. 183, L. 1925; re-en. Sec. 2429.13, R.C.M. 1935; R.C.M. 1947, 84-2905.

7-21-2508. Effect of failure to comply with licensing requirements. Every huckster, as herein defined, doing business without first obtaining a license as required by this part is guilty of a misdemeanor and shall be punished accordingly, as provided in 46-18-212.

History: En. Sec. 6, Ch. 183, L. 1925; re-en. Sec. 2429.14, R.C.M. 1935; R.C.M. 1947, 84-2906.

Part 26

Licensing of Public Dances and Dancehalls

7-21-2601. Definitions. (1) The term "dancehall" shall be construed to mean any room, hall, pavilion, building, or other structure kept for the purpose of conducting therein public dances or dancing.

(2) As used in this part, the term "public dance" shall be construed to mean any dance to which the public generally may gain admission, with or without the payment of an admission fee and whether said admission fee is paid in the form of club dues, membership fees, or in any other manner.

History: En. Sec. 1, Ch. 131, L. 1929; re-en. Sec. 2815.1, R.C.M. 1935; R.C.M. 1947, 16-1166.

7-21-2602. License required to hold public dance or maintain dancehall. (1) No person, partnership, or corporation shall hold any public dance or conduct or maintain any dancehall without the limits of incorporated cities or towns without having first procured from the board of county commissioners of the county in which it is proposed to conduct such dance or dancehall a license to do so.

(2) No license shall be granted to any corporation, but if any dancehall be conducted by a corporation the license shall issue to the manager or other directing head thereof.

(3) No license to conduct a public dance or dancehall shall be granted unless the applicant therefor be of good moral character.

History: En. Sec. 2, Ch. 131, L. 1929; re-en. Sec. 2815.2, R.C.M. 1935; R.C.M. 1947, 16-1167(part).

7-21-2603. Exemption from licensing requirements. (1) Single dances held by grange, patriotic, or fraternal organizations or strictly community dances may be held without a permit.

(2) The county commissioners may issue a permit without charge for grange, patriotic, fraternal, or community dances.

History: En. Sec. 3, Ch. 131, L. 1929; re-en. Sec. 2815.3, R.C.M. 1935; R.C.M. 1947, 16-1168(part).

7-21-2604. License fees. (1) The board of county commissioners of each county shall by a general order, from time to time, fix the fees to be charged for licenses granted under this part.

(2) Such fees, however, may not be less than $5 or more than $25 for an annual dancehall license and may not be less than $1 or more than $5 for a license for a single dance.

History: En. Sec. 3, Ch. 131, L. 1929; re-en. Sec. 2815.3, R.C.M. 1935; R.C.M. 1947, 16-1168(part).

7-21-2605. Application for license. Applications for licenses under this part shall be filed with the clerk of the board of county commissioners and be accompanied with a receipt showing the payment to the county treasurer of a license fee.

History: En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2606. Issuance of license. (1) After determining to grant a license to the applicant, the board of county commissioners shall notify the clerk and recorder.

(2) The clerk and recorder shall issue the license to the applicant.

History: En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2607. Basis for refusal to grant dancehall license. The board of county commissioners may in its discretion refuse to grant licenses for dance halls to be located at such places or to be conducted at such times as will in their judgment interfere with the comfort and happiness of the community in which such proposed dancehall is to be located.

History: En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; R.C.M. 1947, 16-1170(part).

7-21-2608. Revocation of dancehall license. The license of any public dancehall may be forfeited or revoked by the county commissioners for disorderly or immoral conduct on the premises.

History: En. Sec. 7, Ch. 131, L. 1929; re-en. Sec. 2815.7, R.C.M. 1935; R.C.M. 1947, 16-1172.

7-21-2609. Term of license. (1) Licenses for dancehalls shall be issued by the year or by the quarter, as requested by the applicant.

(2) A temporary license of a period not exceeding 30 days may be issued by the clerk and recorder of the county in which such dance is to be held.

(3) A license for a single public dance shall entitle the holder thereof to conduct such dance only on the day and at the place specified in the license.

History: En. Sec. 2, Ch. 131, L. 1929; re-en. Sec. 2815.2, R.C.M. 1935; R.C.M. 1947, 16-1167(part).

7-21-2610. Display of license required. All licenses granted under this part shall be kept posted in a conspicuous place on the licensed premises.

History: En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2611. Restrictions on type of dancing. No immoral, indecent, suggestive, or obscene dance shall be given or carried on in any dancehall or any dance licensed hereunder.

History: En. Sec. 4, Ch. 131, L. 1929; re-en. Sec. 2815.4, R.C.M. 1935; R.C.M. 1947, 16-1169(part).

7-21-2612. Adequate lighting of dancehalls. All buildings, halls, rooms, pavilions, or other places in which public dances are carried on, as well as all halls, corridors, and rooms leading thereto or connected therewith, shall at all times while open to the public be well lighted.

History: En. Sec. 4, Ch. 131, L. 1929; re-en. Sec. 2815.4, R.C.M. 1935; R.C.M. 1947, 16-1169(part).

7-21-2613. Rules for implementation of part. The board of county commissioners shall have authority to make all proper and necessary administrative rules for the purpose of carrying into effect the provisions of this part with respect to the conduct of public dances.

History: En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; R.C.M. 1947, 16-1170(part).

7-21-2614. Enforcement of part. (1) The enforcement of the provisions of this part is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

(2) All peace officers of Montana shall have free access to public dances and dancehalls for the purpose of inspection and to enforce compliance with the provisions of this part.

History: (1)En. Sec. 8, Ch. 131, L. 1929; re-en. Sec. 2815.8, R.C.M. 1935; Sec. 16-1173, R.C.M. 1947; (2)En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; Sec. 16-1170, R.C.M. 1947; R.C.M. 1947, 16-1170(part), 16-1173.

7-21-2615. Effect of failure to comply with part. Any person violating any of the provisions of this part shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $100 or by imprisonment for a term not exceeding 30 days or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 131, L. 1929; re-en. Sec. 2815.9, R.C.M. 1935; R.C.M. 1947, 16-1174.

Parts 27 through 30 reserved

Part 31

Public Scales

7-21-3101. Establishment of public scales. When petitioned by 25 or more residents and freeholders of the county, the board of county commissioners of any county is hereby authorized in its discretion to establish and locate public scales at any suitable location selected by the county commissioners within the county.

History: En. Sec. 1, Ch. 22, L. 1905; re-en. Sec. 2899, Rev. C. 1907; re-en. Sec. 4471, R.C.M. 1921; re-en. Sec. 4471, R.C.M. 1935; R.C.M. 1947, 16-1108.

7-21-3102. Ownership of public scales. Such scales shall be purchased by the county, shall be the property of the county, and at all times shall be under its control and subject to the will of the county commissioners.

History: En. Sec. 2, Ch. 22, L. 1905; re-en. Sec. 2900, Rev. C. 1907; re-en. Sec. 4472, R.C.M. 1921; re-en. Sec. 4472, R.C.M. 1935; R.C.M. 1947, 16-1109(part).

7-21-3103. Capacity and design of public scales. Such scales shall be of not less than 5 tons' weighing capacity and shall be provided with glass or open front which can be observed by the one weighing without dismounting from wagon.

History: En. Sec. 2, Ch. 22, L. 1905; re-en. Sec. 2900, Rev. C. 1907; re-en. Sec. 4472, R.C.M. 1921; re-en. Sec. 4472, R.C.M. 1935; R.C.M. 1947, 16-1109(part).

7-21-3104. Appointment of public weigher. (1) The board of county commissioners shall appoint, at each place where public scales are established by them, a public weigher who shall have the custody and care of such property.

(2) Such public weigher shall be governed by such rules as may be from time to time prescribed or adopted by the board, and he may be removed at any time by such board.

History: (1)En. Sec. 3, Ch. 22, L. 1905; re-en. Sec. 2901, Rev. C. 1907; re-en. Sec. 4473, R.C.M. 1921; re-en. Sec. 4473, R.C.M. 1935; Sec. 16-1110, R.C.M. 1947; (2)En. Sec. 5, Ch. 22, L. 1905; re-en. Sec. 2903, Rev. C. 1907; re-en. Sec. 4475, R.C.M. 1921; re-en. Sec. 4475, R.C.M. 1935; Sec. 16-1112, R.C.M. 1947; R.C.M. 1947, 16-1110(part), 16-1112(part).

7-21-3105. Bond of public weigher. A public weigher appointed pursuant to 7-21-3104 shall give a bond to the county in the sum of $500, conditioned for the safekeeping of the public scales and for the faithful and impartial discharge of the duties incident to his trust in office.

History: En. Sec. 3, Ch. 22, L. 1905; re-en. Sec. 2901, Rev. C. 1907; re-en. Sec. 4473, R.C.M. 1921; re-en. Sec. 4473, R.C.M. 1935; R.C.M. 1947, 16-1110(part).

7-21-3106. Record of weighing. (1) It shall be the duty of each public weigher to keep a stub record of all weighing done by him. The record and the receipt issued by such public weigher shall show for whom property was weighed and the character and kind thereof and shall constitute prima facie evidence of the facts therein contained.

(2) All such stub records or other records which the county commissioners may require him to keep shall at all times be open to public inspection during business hours, between 7 a.m. and 6 p.m. of any day, except Sundays and legal holidays.

(3) Such public weigher shall file a sworn statement with the county recorder of the county, as prescribed by the county commissioners thereof. The statement shall show the date and character or kind of property weighed, for whom weighed, and a complete statement of all fees collected.

History: En. Sec. 4, Ch. 22, L. 1905; re-en. Sec. 2902, Rev. C. 1907; re-en. Sec. 4474, R.C.M. 1921; re-en. Sec. 4474, R.C.M. 1935; R.C.M. 1947, 16-1111.

7-21-3107. Fee for weighing. Such public weigher shall receive not to exceed 10 cents for each receipt issued by him.

History: En. Sec. 5, Ch. 22, L. 1905; re-en. Sec. 2903, Rev. C. 1907; re-en. Sec. 4475, R.C.M. 1921; re-en. Sec. 4475, R.C.M. 1935; R.C.M. 1947, 16-1112(part).

7-21-3108. Misconduct by public weigher. Any public weigher under the provisions of this part who shall make any false or fraudulent receipt of any weighing done by him or shall be guilty of any collusion with any other person or persons for the purpose of deceiving any person or persons in regard to the correctness of weights or who shall fail to comply with the requirements of 7-21-3104(2) or 7-21-3107 is guilty of a misdemeanor.

History: En. Sec. 6, Ch. 22, L. 1905; re-en. Sec. 2904, Rev. C. 1907; re-en. Sec. 4476, R.C.M. 1921; re-en. Sec. 4476, R.C.M. 1935; R.C.M. 1947, 16-1113.

Part 32

County Agricultural and Livestock Services

7-21-3201. Authorization to appropriate money for promotion of county products. (1) The board of county commissioners of any county may appropriate money from the general fund of the county for advertising the agricultural resources of the county through the department of agriculture or for assisting the department of agriculture in presenting exhibits of Montana products at fairs or expositions outside the state.

(2) Said money shall be expended in such manner as the board may direct or may be transmitted to the department of agriculture, when such appropriation is for the purpose of assisting said department in advertising the resources or presenting the exhibits herein indicated.

History: (1)En. Sec. 1, Ch. 107, L. 1927; re-en. Sec. 4470.1, R.C.M. 1935; amd. Sec. 116, Ch. 218, L. 1974; Sec. 16-1105, R.C.M. 1947; (2)En. Sec. 2, Ch. 107, L. 1927; re-en. Sec. 4470.2, R.C.M. 1935; Sec. 16-1106, R.C.M. 1947; R.C.M. 1947, 16-1105, 16-1106(part).

7-21-3202. Limitation on appropriation to promote county products. The appropriation authorized by 7-21-3201 shall not exceed in any one year the following amounts:

(1) in counties of the first class or second class, $1,000;
(2) in counties of the third class, $500;
(3) in all other counties, $250.

History: En. Sec. 2, Ch. 107, L. 1927; re-en. Sec. 4470.2, R.C.M. 1935; R.C.M. 1947, 16-1106(part).

7-21-3203. Support of extension work in agriculture and home economics. (1) The county commissioners of any county may appropriate money from the general funds of the county treasury or from funds provided by special levy, which the county commissioners are hereby authorized to make at the same time as other levies for county purposes, for the purpose of carrying on extension work in agriculture and home economics within the county in cooperation with Montana state university and the United States department of agriculture.

(2) The amount of such appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents and the compensation and conditions of service of such agents shall be covered in memoranda of agreement between the county commissioners and Montana state university.

History: En. Sec. 1, Ch. 109, L. 1913; amd. Sec. 1, Ch. 54, L. 1915; amd. Sec. 1, Ch. 13, L. 1919 re-en. Sec. 4487, R.C.M. 1921; re-en. Sec. 4487, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1949; R.C.M 1947, 16-1130.

7-21-3204 through 7-21-3210 reserved.

7-21-3211. Employment of stock inspector. (1) Whenever the board of county commissioners is satisfied, from its own knowledge or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock is being stolen, slaughtered, or otherwise disposed of contrary to law in such county and in such manner that the public officers of the county are not in position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution, the board of each county, except in counties of the first class, has the power to employ a stock inspector.

(2) Whenever such a stock inspector is so employed, the employment shall be only for the case or cases then under investigation. During the existence of such appointment, he shall be vested with the same police power and authority as the sheriff, within the limitation of the purposes for which he is appointed.

History: En. Sec. 2, Ch. 61, L. 1909; re-en. Sec. 4484, R.C.M. 1921; re-en. Sec. 4484, R.C.M. 1935; R.C.M. 1947, 16-1124(part).

7-21-3212. Compensation of stock inspector. (1) Whenever such a stock inspector is so employed, his compensation shall be at the rate of not to exceed the sum of $7.50 per day and necessary expenses for the time actually engaged in such work, and he shall be paid by a warrant on the general fund of the county.

(2) Whenever a stock inspector is so employed in the investigation of a crime and a reward has been offered under 7-32-2301 for the apprehension and conviction of the party or parties guilty of such crime, such inspector shall not be entitled to any part of said reward.

History: En. Sec. 2, Ch. 61, L. 1909; re-en. Sec. 4484, R.C.M. 1921; re-en. Sec. 4484, R.C.M. 1935; R.C.M. 1947, 16-1124(part).

7-21-3213. Confidentiality of appointment of stock inspector. The proceedings and meetings of the board of county commissioners relating to the employment of a stock inspector shall not be made public until after the investigation of the crime or crimes by said inspector is completed, and any officer who divulges the name of the stock inspector employed or the purpose of his employment during such period shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 61, L. 1909; re-en. Sec. 4485, R.C.M. 1921; re-en. Sec. 4485, R.C.M. 1935; R.C.M. 1947, 16-1125.

Part 33

Public Markets

7-21-3301. Establishment of markets and market houses. In addition to the powers specifically granted by the laws of the state and such other limitations and exceptions contained in the existing statutes of the state in reference to the debt-incurring power of boards of county commissioners, the boards of county commissioners in every county in Montana shall have the power to erect market houses to be located at the county seats of their respective counties, to establish and regulate markets, and to acquire the property necessary therefor.

History: En. Sec. 1, Ch. 28, L. 1917; re-en. Sec. 4488, R.C.M. 1921; re-en. Sec. 4488, R.C.M. 1935; R.C.M. 1947, 16-1136.

7-21-3302. Acquisition of property for establishment and maintenance of public markets. The boards of county commissioners within Montana may acquire by purchase, lease, construction, or otherwise suitable grounds, buildings, and quarters for the establishing, conducting, operating, and maintaining of a public market open to the farmers, gardeners, and actual producers of farm products within their respective counties.

History: En. Sec. 2, Ch. 28, L. 1917; re-en. Sec. 4489, R.C.M. 1921; re-en. Sec. 4489, R.C.M. 1935; R.C.M. 1947, 16-1137(part).

7-21-3303. Opening of public market. The boards of county commissioners of the counties of the state availing themselves of the provisions of this part must, as soon as the lands and premises necessary therefor have been acquired, cause to be opened and maintained at the county seats of their respective counties and in the quarters so acquired an open public market for the benefit of the farmers, gardeners, and actual producers of farm products, for the sale by the producers thereof direct to the consumers of butter, eggs, cheese, meats, vegetables, and all other farm products raised or produced for domestic consumption, wherein the producers thereof within each county may display and offer for sale his or her products direct to the consumers thereof within said counties.

History: En. Sec. 2, Ch. 28, L. 1917; re-en. Sec. 4489, R.C.M. 1921; re-en. Sec. 4489, R.C.M. 1935; R.C.M. 1947, 16-1137(part).

7-21-3304. Days of operation of market. All county markets established under the provisions of this part shall be open to the public not less than 2 days in each week.

History: En. Sec. 5, Ch. 28, L. 1917; re-en. Sec. 4492, R.C.M. 1921; re-en. Sec. 4492, R.C.M. 1935; R.C.M. 1947, 16-1140(part).

7-21-3305. Notice of rules and days of operation. The rules adopted for the government of the county market, together with a notice of the market days in each week, shall be published by the county commissioners once in each year in every newspaper printed and published in their respective counties for a period of not less than 2 successive weeks, the first publication thereof to be made not less than 2 weeks prior to the opening of the markets established hereunder in each county and the future annual publications thereof to be made at such time as may be ordered by the boards of county commissioners.

History: En. Sec. 5, Ch. 28, L. 1917; re-en. Sec. 4492, R.C.M. 1921; re-en. Sec. 4492, R.C.M. 1935; R.C.M. 1947, 16-1140(part).

7-21-3306. Payment of expenses incurred in connection with public market. The expense of the establishment and maintenance of the markets provided for in this part shall be paid by the boards of county commissioners from the general funds of the counties, except such portions of the expense of operating and maintaining the same as may be derived from the revenues provided for in this part.

History: En. Sec. 6, Ch. 28, L. 1917; re-en. Sec. 4493, R.C.M. 1921; re-en. Sec. 4493, R.C.M. 1935; R.C.M. 1947, 16-1141.

7-21-3307. Gross proceeds charge. (1) Every producer of products availing himself or herself of the use of the marketplace established under the provisions of this part shall pay or cause to be paid, at the close of each day's business, to the market master thereof a charge of 5% of his or her gross sales.

(2) The funds thus collected by the market master shall be turned in to the county treasury to the credit of the county market fund and shall be used by the county treasurer toward the payment of the expenses of operating and maintaining such public market.

History: En. Sec. 4, Ch. 28, L. 1917; re-en. Sec. 4491, R.C.M. 1921; re-en. Sec. 4491, R.C.M. 1935; R.C.M. 1947, 16-1139(part).

7-21-3308. Effect of failure to pay gross proceeds charge. Every person, firm, or corporation availing themselves of the privileges provided hereby who shall fail, neglect, or refuse to so pay to the market master of the county market of any county of this state 5% of the gross sales made by them within such market shall be guilty of a misdemeanor and upon the conviction thereof shall be fined not less than $10 or more then $100 and imprisoned in the county jail until such fine be paid, in the manner provided by law, and shall be forever thereafter disbarred from the privileges afforded by the county markets established at the county seats of every county in Montana.

History: En. Sec. 4, Ch. 28, L. 1917; re-en. Sec. 4491, R.C.M. 1921; re-en. Sec. 4491, R.C.M. 1935; R.C.M. 1947, 16-1139(part).

7-21-3309. Speculative or resale purchases prohibited. No rules adopted for the government of any market established under this part shall permit any person, firm, or corporation to purchase the products displayed and offered for sale for the purpose of speculating thereon by again offering the same for sale within such public marketplace. The privileges of the markets established under the provisions of this part shall be extended only to the actual producers of the products offered for sale.

History: En. Sec. 7, Ch. 28, L. 1917; re-en. Sec. 4494, R.C.M. 1921; re-en. Sec. 4494, R.C.M. 1935; R.C.M. 1947, 16-1142.

7-21-3310 through 7-21-3320 reserved.

7-21-3321. Market master. In each of the counties of this state wherein the office of county auditor exists, the county auditor shall be ex officio the county market master. In all other counties which may avail themselves of the provisions of this part wherein no office of county auditor is maintained, the county clerk of such county shall be ex officio market master.

History: En. Sec. 3, Ch. 28, L. 1917; re-en. Sec. 4490, R.C.M. 1921; re-en. Sec. 4490, R.C.M. 1935; R.C.M. 1947, 16-1138(part).

7-21-3322. Role of market master. (1) Such market master shall, under the supervision and approval of the board of county commissioners, make all necessary rules for the establishment, maintenance, operation, and control of the markets established hereunder in the respective counties of the state.

(2) It shall be the duty of such market master:

(a) to cause the market buildings, grounds, and premises to be kept reasonably clean and in proper sanitary condition;

(b) to arrange for stalls and spaces in such manner as to best suit the convenience of both buyers and sellers;

(c) to see that the laws of Montana in reference to weights and measures are enforced and observed;

(d) to cause order to be preserved during the time such market shall be open and in operation;

(e) to prevent and remove obstructions from the marketplace or grounds;

(f) to remove all vagrants, prevent disorderly conduct, and prevent disorderly persons from loitering in said market buildings, space, or grounds during the market hours;

(g) to cause all offenses against the laws of Montana in relation to the inspection of foods or the sale of unclean, unwholesome, damaged, or spoiled meats, farm products, vegetables, or provisions of any kind to be prosecuted;

(h) to designate proper means of supervising and accounting for the sales therein made and collecting the commissions hereinafter provided for; and

(i) to generally supervise and control the operations of the public markets established under the provisions of this part.

History: En. Sec. 3, Ch. 28, L. 1917; re-en. Sec. 4490, R.C.M. 1921; re-en. Sec. 4490, R.C.M. 1935; R.C.M. 1947, 16-1138(part).

Part 34

County Fairs

7-21-3401. Authorization to create county fair commission. (1) The board of county commissioners may, at any regular meeting, appoint from the electors of the county five responsible persons to constitute a county fair commission, three of the members to be appointed for a term of 2 years and two for a term of 1 year and until their successors are appointed.

(2) Each year thereafter, the board of county commissioners shall appoint members of the county fair commission to succeed the members whose terms then expire.

History: En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; R.C.M. 1947, 16-1401(part); amd. Sec. 5, Ch. 249, L. 1979.

7-21-3402. Term of office. The appointments subsequent to the initial appointments shall be for a term of 2 years.

History: En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; R.C.M. 1947, 16-1401(part).

7-21-3403. Qualifications for office. (1) Persons appointed as county fair commissioners shall be well qualified to perform the duties of organizing and successfully carrying on the county fair.

(2) In case there is in any county a fair association or a horticultural or agricultural society, the board of county commissioners may appoint said fair commission from the members of said fair association or horticultural or agricultural society, giving preference in said appointments to the officers of the association or society.

History: (1)En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; Sec. 16-1401, R.C.M. 1947; (2)En. Sec. 2, Ch. 52, L. 1935; re-en. Sec. 4545.1, R.C.M. 1935; Sec. 16-1402, R.C.M. 1947; R.C.M. 1947, 16-1401(part), 16-1402(part).

7-21-3404. Organization of county fair commission. Said commission shall organize by electing one of its members president and one of its members vice-president. The county treasurer shall be ex officio the treasurer. The secretary shall be appointed by the commission and may be a member of the commission.

History: En. Sec. 5, Ch. 67, L. 1903; re-en. Sec. 2931, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 3, Ch. 131, L. 1917; re-en. Sec. 4547, R.C.M. 1921; re-en. 4547, R.C.M. 1935; R.C.M. 1947, 16-1404(part).

7-21-3405. Compensation of county fair commissioners. (1) Each member of the commission is entitled to a salary of $25 a year as compensation for his services. If the secretary of the county fair commission is a member of the commission, then his salary shall be fixed by the commission in lieu of the salary of $25 a year.

(2) In addition to the salary provided by subsection (1), each commissioner may be allowed his actual and necessary expenses while fulfilling the duties of his office.

History: Ap. p. Sec. 3, Ch. 67, L. 1903; re-en. Sec. 2929, Rev. C. 1907; amd. Sec. 4, Ch. 131, L. 1917; re-en. Sec. 4548, R.C.M. 1921; re-en. Sec. 4548, R.C.M. 1935; Sec. 16-1405, R.C.M. 1947; Ap. p. Sec. 5, Ch. 67, L. 1903; re-en. Sec. 2931, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 3, Ch. 131, L. 1917; re-en. Sec. 4547, R.C.M. 1921; re-en. 4547, R.C.M. 1935; Sec. 16-1404, R.C.M. 1947; R.C.M. 1947, 16-1404(part), 16-1405; amd. Sec. 6, Ch. 249, L. 1979.

7-21-3406. Powers of county fair commission. Said county fair commissioners shall have control and operation of the fair and the supervision and management of the fairgrounds and also the leasing of buildings and fairgrounds and shall return to the fair fund of the county all revenue obtained from the leasing or renting of the same.

History: En. Sec. 2, Ch. 52, L. 1935; re-en. Sec. 4545.1, R.C.M. 1935; R.C.M. 1947, 16-1402(part).

7-21-3407. Duties of county fair commission. Said commission shall do all things necessary to hold a successful county agricultural fair in their respective counties and shall have charge of all fairgrounds and fair property.

History: En. Sec. 4, Ch. 67, L. 1903; re-en. Sec. 2930, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 2, Ch. 131, L. 1917; re-en. Sec. 4546, R.C.M. 1921; re-en. Sec. 4546, R.C.M. 1935; R.C.M. 1947, 16-1403.

7-21-3408. Acquisition of property for fair purposes. (1) The board of county commissioners of any county in Montana may purchase, receive by donation, or own and hold a tract of land in their respective county, not exceeding 160 acres, as county fairgrounds and an additional tract of land in their respective county, not exceeding 80 acres, as junior fairgrounds. These lands may be used by the county fair commission for the purpose of promoting the interests of horticulture, agriculture, and stockraising.

(2) The board which shall avail itself of the foregoing provisions may purchase, erect, construct, and maintain permanent improvements on such fairgrounds and junior fairgrounds.

History: En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; R.C.M. 1947, 16-1407(part).

7-21-3409. Lease of county fairgrounds and buildings. (1) Boards of county commissioners are hereby authorized to lease for limited periods of time county fairgrounds and buildings thereon on such terms as they shall deem proper. No lease shall be executed to permit the use of said premises during any time within 3 weeks prior to the holding of a county fair.

(2) In the event same are leased for entertainment purposes, the county commissioners shall collect an amount deemed proper by them, but not in excess of 20% of the gross receipts taken in by the lessee. Said property shall not be leased unless the lessee shall give a bond such as the board may deem sufficient.

(3) No lease shall be executed unless the lessee shall agree to furnish adequate police protection over all property so leased. Any lease shall be subject to immediate cancellation by the board in case the lessee fails to maintain order or to properly police the grounds.

(4) All money received from the leasing of fairgrounds shall be deposited in the poor fund of the county.

(5) Nothing herein shall be construed to prevent county commissioners from preventing schools to use fairgrounds for athletic or other public school purposes.

History: (1) thru (3), (5)En. Sec. 1, Ch. 11, Ex. L. 1933; re-en. Sec. 4513.3, R.C.M. 1935; Sec. 16-1154, R.C.M. 1947; (4)En. Sec. 2, Ch. 11, Ex. L. 1933; re-en. Sec. 4513.4, R.C.M. 1935; Sec. 16-1155, R.C.M. 1947; R.C.M. 1947, 16-1154, 16-1155.

7-21-3410. Funding of county fair activities. (1) The board of county commissioners of their respective counties may appropriate annually, out of the general fund of the county treasury and to the county fair commission, a sum not to exceed $3,500, to be expended by the county fair commission for the purpose of holding a county fair and/or junior fair and for advertising the products and resources of their county.

(2) In addition to the appropriation above provided for or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of 1 ½ mills or less on each dollar of taxable property in such county for the purpose of securing, equipping, maintaining, and operating a county fair and/or a junior fair, including the purchase of land for such purposes and the erection of such buildings and other appurtenances as may be necessary.

(3) The funds derived from such appropriation or tax levy shall be kept in a separate fund by the county treasurer and shall be paid out by the treasurer on order signed by the president and secretary of the fair commission.

History: (1), (2)En. Sec. 2, Ch. 67, L. 1903; re-en. Seç. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; re-en. Sec. 4549, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971; Sec. 16-1406, R.C.M. 1947; (3)En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; Sec. 16-1407, R.C.M. 1947; R.C.M. 1947, 16-1406(part), 16-1407(part).

7-21-3411. Restriction on use of appropriation or tax money. No portion of the appropriation or tax levy provided for in 7-21-3410 shall be expended for horseracing.

History: En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; am.d Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; re-en. Sec. 4549, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971; R.C.M. 1947, 16-1406(part).

7-21-3412. Appropriation of money for expenses of exhibiting at other fairs. The board of county commissioners of any county in Montana may appropriate each year the sum of $1,000 (or so much thereof as may be necessary) out of the general funds of the county for the purpose of defraying the expenses of collecting, transporting, and taking care of any exhibit from such county at any state fair, county agricultural fair, 4-H club or future farmers fair, seed show, or other agricultural exhibit held within the state or county.

History: En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; R.C.M. 1947, 16-1407(part).

7-21-3413. Capital improvement fund authorized. The fair commission of any county in Montana is authorized to establish, by a vote of the majority of the commission, a capital improvement fund for the replacement and acquisition of property, buildings, or equipment costing more than $5,000 and having a useful life of 5 years or more.

History: En. 16-1407.1 by Sec. 2, Ch. 19, L. 1975; R.C.M. 1947, 16-1407.1.

7-21-3414. Management of capital improvement fund. (1) Money for the capital improvement fund shall be derived from the unexpended money obtained by the fair commission under 7-21-3410.

(2) The capital improvement fund may not exceed at any time a competent estimate of the cost of the adopted capital improvement program.

(3) All interest earned on the money in the capital improvement fund shall be paid into the county general fund.

History: En. 16-1407.2 by Sec. 3, Ch. 19, L. 1975; R.C.M. 1947, 16-1407.2.

7-21-3415 through 7-21-3420 reserved.

7-21-3421. Authorization to create multicounty fair district. (1) Two or more counties within the state, constituting a contiguous territory, may group themselves together and form a fair district.

(2) The board of county commissioners of any such county, upon application from the regularly appointed county fair commission, may by resolution declare its intention to join in and form a fair district.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 7, Ch. 249, L. 1979.

7-21-3422. Notice of intention to create fair district — hearing. Notice of the resolution of intent to create a fair district shall be published in two regular weekly issues of a newspaper in the county, setting forth the date on which a hearing shall be had on the resolution by the taxpayers and residents of the county and at which time objections will be heard.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 8, Ch. 249, L. 1979.

7-21-3423. Decision by board of county commissioners. After the consideration of objections if there are any, the county commissioners may authorize the county fair commission to join with any existing contiguous district or to form a fair district with counties in contiguous territory.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 9, Ch. 249, L. 1979.

7-21-3424. Authorization for additional counties to join fair district. A contiguous county or counties forming a territory contiguous to a fair district may be added to such fair district after its formation under the same provisions as set forth in 7-21-3421 through 7-21-3423, provided the board of directors of the fair district determines that it is to the best interest of said district that such county or counties be added.

History: En. Sec. 7, Ch. 178, L. 1931; re-en. Sec. 4550.7, R.C.M. 1935; R.C.M. 1947, 16-1414.

7-21-3425. Board of directors of fair district. (1) The members of the respective county fair commissions of the counties forming a fair district constitute a board of directors for the fair district.

(2) After a district has been formed and a county is added thereto, the members of the county fair commission of the county added to the fair district are likewise members of the board of directors of the fair district.

History: En. Sec. 2, Ch. 178, L. 1931; re-en. Sec. 4550.2, R.C.M. 1935; R.C.M. 1947, 16-1409; amd. Sec. 10, Ch. 249, L. 1979.

7-21-3426. Organization of board and conduct of business. (1) The board of directors shall meet at the place of business, established under 7-21-3427, during the month of December of each year and organize, electing a chairman, vice-chairman, and secretary for the board.

(2) Such subsequent meetings shall be held as may be found necessary for the conduct of the district fair.

(3) The board of directors shall have power to employ a secretary, whom they may vest with managerial powers, and they shall also appoint a treasurer. The office of secretary may be combined with that of treasurer.

(4) The board of directors shall see that:

(a) all records and accounts are properly kept, supervised, and approved;

(b) proper vouchers evidence all disbursements of money; and

(c) the records are at all reasonable hours open to the public.

History: En. Secs. 3, 4, Ch. 178, L. 1931; re-en. Secs. 4550.3, 4550.4, R.C.M. 1935; R.C.M. 1947, 16-1410(part), 16-1411(part); amd. Sec. 11, Ch. 249, L. 1979.

7-21-3427. Role of fair district board of directors. (1) The board of directors shall be charged with the care and custody of all property of the district fair. They shall have power to acquire for the benefit of the district such real and personal property as may be required in connection with the conduct of district fairs.

(2) They shall be vested with the general powers granted commissioners of county fairs. They shall have power to do everything necessary in connection with the holding of the annual district fair, including the employment of labor, awarding of prizes, making of exhibition contracts, charging admission and entrance fees, and everything that is necessary in conducting the business of the district. They shall fix the salaries of all employees and prescribe the time and manner of payment.

(3) They shall designate a place within the fair district where the fairgrounds shall be located, and this place shall thereafter be the place of business of said district.

(4) They shall formulate in writing and file in the district office all plans adopted by them from time to time in connection with the conduct of the affairs of said district.

History: Ap. p. Sec. 3, Ch. 178, L. 1931; re-en. Sec. 4550.3, R.C.M. 1935; Sec. 16-1410, R.C.M. 1947; Ap. p. Sec. 4, Ch. 178, L. 1931; re-en. Sec. 4550.4, R.C.M. 1935; Sec. 16-1411, R.C.M. 1947; R.C.M. 1947, 16-1410(part), 16-1411(part).

7-21-3428. Title to fair district property. The ownership of the real or personal property acquired by the fair district shall be vested in the joint ownership of the counties comprising the district or in one county for the benefit of the district, as may be provided for by the board of directors.

History: En. Sec. 6, Ch. 178, L. 1931; re-en. Sec. 4550.6, R.C.M. 1935; R.C.M. 1947, 16-1413.

7-21-3429. Preparation of fair district budget. (1) To raise the revenue necessary to hold district fairs, the board of directors shall meet during the first week of May of each year and make a budget of the amounts required in the conduct of the affairs of the district for the following year. The board shall deduct from the budget the probable income from the annual district fair and other exhibitions to be held by the district during the following year.

(2) The board shall then apportion the remaining balance among the various counties forming the district in proportion to the assessed property of each county as determined by the assessment rolls of the preceding year. By mutual agreement of the directors, the share apportioned to the county in which the fair is being conducted may be made larger than in other counties comprising the district.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3430. Certification of budget to boards of county commissioners. The secretary shall certify to each board of county commissioners the amount of the budget and the amount of revenue to be raised by the county for these purposes and shall file a certified copy thereof with the clerk of the board of county commissioners of each of the counties in the district on or before June 1 of each year.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3431. Meeting on fair district budget. The respective boards of county commissioners of the counties comprising the district shall meet in joint assembly with their county fair commissioners during the first week of June of each year and jointly consider the budget proposed by the board of directors of the district and give such approval or suggest such amendments or modifications as they think proper and desirable.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3432. Effect of failure of county commissioners to meet or take action. If the county commissioners fail to hold the joint meeting or fail to take any action, then the budget certified by the secretary of the fair district shall be approved without further action and the sums of money apportioned to the county shall be the sums to be raised by special levy for this purpose.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3433. Authorization for mill levy. (1) For the purpose of raising the revenues, the board of county commissioners of each county in the district shall annually make a levy to raise the required sum apportioned to the respective county.

(2) However, the levy shall not exceed 1 mill on the dollar of the taxable value of all the taxable property in the county, except in the case of the county in which the fair is being conducted. In this county, the levy shall not exceed 1 ½ mills on the dollar of taxable property in the county.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3434. Transfer of county fair money to fair district. In addition to the levy authorized by 7-21-3433, any and all money available for the holding of county fairs may be allotted and transferred to the use of the district fair, as the respective county fair commissioners may elect.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3435. Management of fair district money — district fair fund. (1) The funds available to a district fair shall, on the first Monday in August or as soon thereafter as may be possible, be deposited with the county treasurer of the county in which the district fair is to be held and credited to a fund to be known as the district fair fund and shall be held and paid out in the same manner as the county fair fund, except that it shall be paid out on district fair board warrants signed by the chairman or the vice-chairman and the secretary of the district fair board.

(2) The treasurer of the county in which the district fair will be held shall carry the money received from the various counties in the district in the regular county fair fund in the same manner as regular county fair money, payable, however, only on district fair warrants.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

Parts 35 through 40 reserved

Part 41

Municipal Licensing Authority

7-21-4101. General licensing power of municipalities. (1) The city or town council has power:

(a) to license by ordinance all industries, pursuits, professions, and occupations and to impose penalties for failure to comply with such license requirements;

(b) to fix the amount, terms, and manner of issuing and revoking licenses.

(2) The council may refuse to issue licenses when it may deem it best for the public interests.

History: Ap. p. Subds. 3, 4, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.2, 5039.3, R.C.M. 1935; Secs. 11-903, 11-904, R.C.M. 1947; Ap. p. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; Sec. 84-4737, R.C.M. 1947; R.C.M. 1947, 11-903, 11-904, 84-4737(part).

7-21-4102. Collection of license fees. The city treasurer must collect the license fees authorized by 7-21-4101 in the manner and at the time prescribed by ordinance.

History: En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; R.C.M. 1947, 84-4737(part).

7-21-4103. Issuance of licenses. The city clerk must issue such licenses.

History: En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; R.C.M. 1947, 84-4737(part).

Part 42

Municipal Regulation of Business and Commodities

7-21-4201. Regulation of certain activities. (1) The city or town council may license, tax, and regulate:

(a) auctioneers, peddlers, pawnbrokers, and secondhand and junk shops;

(b) motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed;

(c) drivers, porters, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusement within the city or town.

(2) The power to license, tax, and regulate circuses and shows of like character extends 3 miles beyond the limits of the city or town.

(3) The council of any city or town may enact necessary ordinances providing for the licensing, taxation, and regulation of soft drink establishments and all pool and billiard halls. The city or town council may regulate and limit the number of such licenses issued and provide by ordinance that the

total number of such licenses may not exceed the number fixed by the city or town council by ordinance.

History: (1), (2)En. Subd. 16, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.15, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1965; Sec. 11-918, R.C.M. 1947; (3)En. Sec. 1, Ch. 136, L. 1923, re-en. Sec. 5039.84, R.C.M. 1935; Sec. 11-987, R.C.M. 1947; R.C.M. 1947, 11-918, 11-987; amd. Sec. 12, Ch. 249, L. 1979.

7-21-4202. Regulation of foodstuffs. The city or town council has power to provide for and regulate the inspection of beef, pork, flour, meal, and all provisions and oils; to regulate the inspection of milk, water, butter, lard, and other provisions; to regulate the vending of meat, poultry, fish, game, and vegetables; to restrain and punish the forestalling of provisions.

History: En. Subd. 22, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.21, R.C.M. 1935; R.C.M. 1947, 11-924.

7-21-4203. Authority to weigh, measure, and regulate certain commodities. The city or town council has power to regulate the inspection, weighing, and measuring of wood, coal, stone, corn or other grain, and hay within the city or town.

History: En. Subd. 23, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.22, R.C.M. 1935; R.C.M. 1947, 11-925.

7-21-4204. Regulation of location of businesses, factories, and steam boilers. The city or town council has power:

(1) to regulate the location of slaughterhouses, breweries, distilleries, livery stables, foundries, blacksmith shops, planing mills, soap factories, and tanneries within the city or town and to prohibit any offensive and unwholesome establishments within the city or town limits or within 3 miles thereof;

(2) to regulate the location of steam boilers.

History: En. Subds. 42, 70, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.41, 5039.69, R.C.M. 1935; R.C.M. 1947, 11-944, 11-972(part).

7-21-4205. Licensing and regulating of vehicles engaged in transporting persons and property. The city or town council has power to license and regulate automobiles, trucks, hackney carriages, carts, omnibuses, wagons, and drays and to fix the rate to be charged for the carriage of persons and property within the city or town and to the public works and property without the limits of the city or town.

History: En. Subd. 54, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.53, R.C.M. 1935; R.C.M. 1947, 11-956.

7-21-4206. Control of erection of signs and awnings. The city or town council has power to regulate the putting up of signs and awnings.

History: En. Subd. 70, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.69, R.C.M. 1935; R.C.M. 1947, 11-972(part).

7-21-4207. Authority to require records for pawn, secondhand, and junk shops. The city or town council has power to require the owners and keepers of pawn, secondhand, and junk shops to keep a record of all articles purchased or pawned to them. The record and the articles purchased or pawned are subject to the inspection of all police officers of the city or town.

History: En. Subd. 17, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.16, R.C.M. 1935; R.C.M. 1947, 11-919.

7-21-4208. Regulation of purchases from minors by pawn, secondhand, and junk shops. The city or town council has power to prevent the keepers of pawn, secondhand, and junk shops from the purchasing of any article from a minor without the written consent of the parent or guardian of such minor.

History: En. Subd. 18, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.17, R.C.M. 1935; R.C.M. 1947, 11-920.

7-21-4209. Establishment and supervision of markets. The city or town council has power to establish markets and market houses and provide for the supervision and use thereof.

History: En. Subd. 21, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.20, R.C.M. 1935; R.C.M. 1947, 11-923.

7-21-4210. Regulation of dance houses. The city or town council has power to regulate or prohibit dance houses within the city or town limits and within 3 miles thereof.

History: En. Subd. 19, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.18, R.C.M. 1935; R.C.M. 1947, 11-921.

7-21-4211. Regulation of prizefights and boxing matches. The city or town council has power to prevent and prohibit prizefights, boxing matches of any kind, with or without gloves, or exhibition of prizefighters, boxers, or sluggers in the city or town or within 5 miles thereof.

History: En. Subd. 71, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.70, R.C.M. 1935; R.C.M. 1947, 11-973.

CHAPTER 22

WEED AND PEST CONTROL

Part 1 — Control of Dutch Elm Disease

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Part 1

Control of Dutch Elm Disease

7-22-101. Purpose. The legislature finds that an epidemic of Dutch elm disease is occurring in Montana which threatens the natural environment. Immediate action is therefore necessary to provide funds to assist local governments in the implementation of Dutch elm disease control programs by conducting reforestation, sanitation, and wood utilization or disposal systems, increasing public awareness of Dutch elm disease, accelerating training of tree inspectors and research for disease prevention, and subsidizing private property owners for the removal of diseased elm trees.

History: En. Sec. 1, Ch. 535, L. 1979.

7-22-102. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of agriculture.

(2) "Local government" means any political subdivision, including any city or town, whether exercising self-government powers or general government powers, county, or any combination formed under the Interlocal Cooperation Act.

(3) "Reforestation" means the replacement of elm trees removed from public property as part of an approved disease control program.

(4) "Public property" includes private property within 5 feet of the boulevard or street terrace in any city which has enacted an ordinance on or before July 1, 1981, that prohibits or requires a permit for the planting of trees in the public right-of-way.

(5) "Sanitation" means the identification, inspection, or disruption of a common root system and girdling, trimming, removal, and disposal of dead or diseased wood of elm or oak shade trees.

(6) "Wood utilization or disposal system" means facilities, equipment, or systems used for the removal and disposal of diseased trees.

History: **En. Sec. 2, Ch. 535, L. 1979.**

7-22-103. Department to adopt rules. (1) The department shall adopt rules that will apply to local governments. A rule will not apply to a local government if an ordinance is adopted which is more stringent as determined by the department.

(2) The rules shall prescribe control measures to be used to prevent the spread of Dutch elm disease and shall include the following:

(a) qualifications for tree inspectors;

(b) methods to be used for identifying diseased shade trees;

(c) procedures for giving reasonable notice of inspection of private real property;

(d) measures for the removal of any elm tree that may contribute to the spread of Dutch elm disease;

(e) methods of reforestation in areas under an approved Dutch elm disease control program; and

(f) any other rule considered by the department as necessary to insure that approved disease control programs will prevent the spread of Dutch elm disease.

History: **En. Sec. 3, Ch. 535, L. 1979.**

Compiler's Comments

Statement of Intent. The statement of intent attached to HB 875 (Ch. 535, L. 1979) provided: "HB 875 requires the Department of Agriculture to adopt rules to control the spread of Dutch elm disease in Montana. Section 3 of the bill specifies the rules that the department may adopt."

7-22-104. Experimental programs. The department may establish experimental programs for sanitation or treatment of elm tree diseases. The department may make grants to local governments or enter into contracts with municipal, state, or federal agencies in connection with experimental elm tree disease control programs.

History: **En. Sec. 11, Ch. 535, L. 1979.**

7-22-105. Reports to the legislature. On or before January 31 of each year, the department shall report to the legislature on the preceding year's approved disease control programs and any experimental programs conducted pursuant to 7-22-104.

History: **En. Sec. 12, Ch. 535, L. 1979.**

Compiler's Comments

Commissioner correction. A reference to "[section 12]" was changed to 7-22-104, which corresponds to section 11, by the Code Commissioner, 1979, to correct a typographical error.

7-22-106. Department to accept funds — responsibility and liability limited. The department is authorized to accept funds from any source available for use in this program. The responsibility and liability of the department to conduct or participate in this program shall be limited to the amount of funds available.

History: **En. Sec. 13, Ch. 535, L. 1979.**

7-22-107 through 7-22-110 reserved.

7-22-111. Removal of diseased elm trees — assessment of costs. (1) Local governments with Dutch elm disease control programs approved by the department may inspect private real property after giving reasonable notice for the presence of Dutch elm disease.

(2) An owner of the real property on which a diseased elm tree is located may be required to remove or treat the tree within the period of time and in the manner established by the department.

(3) Diseased elm trees that are not removed or treated by approved methods by the department, after issuance of an order to that effect by the local government, may be declared a public nuisance and removed or treated by the local government. The local government may assess an amount up to the actual expense upon the landowner, and the assessment shall be a lien on the property. In addition a local government may assess to the abutting properties up to 50% of the actual expenses of treating or removing with approved methods diseased elm trees located on street terraces or boulevards, and the assessment constitutes a lien on the property.

History: **En. Sec. 4, Ch. 535, L. 1979.**

7-22-112. Approval of disease control programs — eligibility for grants. The department, after notice and an opportunity for a hearing, shall approve any program for the control of Dutch elm disease submitted to the department that complies with the rules adopted by the department pursuant to 7-22-103 and that is determined to be an effective program for preventing the spread of Dutch elm disease. A disease control program must be approved before the local government is eligible for grants available in 7-22-113. A local government may make application for a grant at the same time approval of a disease control program is sought.

History: **En. Sec. 5, Ch. 535, L. 1979.**

7-22-113. Grants to local governments. (1) The department may, within the limit of appropriations provided, make grants to local governments with approved disease control programs for the partial funding of sanitation and reforestation programs.

(2) The department shall make rules for the administration of grants authorized by this section. The rules shall establish and contain as a minimum:

(a) procedures for grant applications;

(b) conditions and procedures for the administration of grants; and

(c) such other matters as the director may find necessary for the proper administration of the grant program.

(3) Based on estimates of the costs for the succeeding quarter under an approved program of wood utilization and disposal systems, sanitation, and reforestation submitted by a local government, the department shall direct quarterly advance payments to be made by the state to the local government.

The department shall direct adjustment of any overestimate in a succeeding quarter. A local government may elect to receive the proceeds of its sanitation and reforestation grants on a periodic cost reimbursement basis.

History: **En. Sec. 6, Ch. 535, L. 1979.**

7-22-114. Limitations on grants. (1) Grant payments for wood utilization and disposal systems made by the department pursuant to 7-22-113 may not exceed 50% of the total cost of the system.

(2) Grants to any local government for sanitation may not exceed 45% of sanitation costs approved by the department, including any amount of sanitation costs paid by special assessments, ad valorem taxes, federal grants, or other funds. A local government may not specially assess a property owner any amount greater than the amount of the tree's sanitation cost minus the amount of the tree's sanitation cost reimbursed by the department.

(3) Grants to local governments for reforestation may not exceed the lesser of 50% of the cost or $40 multiplied by the number of trees planted pursuant to the reforestation program and are limited for any local government in any year to grants for not more than the number of trees removed on public property in the sanitation program in the previous year, except during the first year of any approved disease control program.

History: **En. Sec. 6, Ch. 535, L. 1979.**

7-22-115. Subsidies to certain owners. A local government may provide subsidies to nonprofit organizations, to owners of private residential property of 5 acres or less, to owners of property used for a homestead of more than 5 acres but less than 20 acres, and to nonprofit cemeteries for the approved treatment or removal of diseased elm trees. An owner of property on which elm trees are located may contract with a local government to provide protection against the cost of approved treatment or removal of diseased elm trees or elm trees that will contribute to the spread of elm tree diseases. Under such contracts, the local government shall pay for the removal or approved treatment under such terms and conditions as may be determined by the governing body of the local government.

History: **En. Sec. 7, Ch. 535, L. 1979.**

7-22-116. Appointment of tree inspector — certification. (1) Each local government with an approved disease control program shall appoint a qualified person to be known as the tree inspector to administer the rules of the department or the more stringent local ordinances concerning elm tree disease in that disease control area. Two or more local governments may jointly appoint a tree inspector.

(2) Upon a determination by the department that a candidate for the position of the inspector is qualified, it shall issue a certificate to the tree inspector that he is so qualified. Any person certified as a tree inspector by the department is authorized to enter and inspect any public or private property in that disease control area that might harbor diseased elm trees, provided prior notice is given as required by rules of the department made pursuant to 7-22-103.

(3) The department may upon notice and an opportunity for a hearing decertify any tree inspector when it appears that the tree inspector has failed

to act competently or in the public interest in the performance of his duties. Nothing in this subsection limits or otherwise affects the authority of the department to dismiss or suspend a tree inspector at its discretion, except as otherwise provided by law.

History: **En. Sec. 8, Ch. 535, L. 1979.**

7-22-117. Financing. (1) A local government may collect the amount assessed against the property under 7-22-111 as a special assessment.

(2) After a contract for the sanitation or approved treatment of trees on private property has been let or the work commenced, the local government may issue bonds financed by special assessments imposed upon the private property to defray the expense of the work.

History: **En. Sec. 9, Ch. 535, L. 1979.**

7-22-118. Deposit of proceeds in a separate fund. The proceeds of any tax levied, assessments and interest collected, or any bonds issued under 7-22-117 and any grants received under 7-22-113 must be deposited by the local government in a separate fund and expended only for the purposes authorized in this part.

History: **En. Sec. 10, Ch. 535, L. 1979.**

Parts 2 through 20 reserved

Part 21

County Weed Control

7-22-2101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Commissioners" means the board of county commissioners.

(2) "District" means the area included within the boundaries of an organized weed control and weed seed extermination district.

(3) "Noxious weeds" or "weeds" means Canadian thistle (Cirsium arvense (L.) scop.), wild morning glory or bindweed (Convolvulus arvensis L.), whitetop (Lepidium draba L.), leafy spurge (Euphorbia virgata waldst. and kit.), Russian knapweed (Centaurea pieris pallas.), and such other weeds as may be defined and designated as noxious weeds by the board of county commissioners of each county, subject to the approval of the county extension agent or agricultural experiment station at Montana state university.

(4) "Seed" or "seeds" means the seed of any noxious weed.

(5) "Supervisors" means the persons appointed by the board of county commissioners to supervise the weed control and weed seed extermination within the county.

History: **(1), (2), (4), (5)En. Sec. 1, Ch. 195, L. 1939; Secs. 16-1702, 16-1703, 16-1704, 16-1705, R.C.M. 1947; (3)En. Sec. 1, Ch. 195, L. 1939; amd. Sec. 1, Ch. 360, L. 1974; Sec. 16-1701, R.C.M. 1947; R.C.M. 1947, 16-1701(part), 16-1702(part), 16-1703, 16-1704, 16-1705; amd. Sec. 13, Ch. 249, L. 1979.**

7-22-2102. Weed control and weed seed extermination districts established. A weed control and weed seed extermination district shall be formed in every county of this state and shall include all the land within the boundaries of the county.

History: En. 16-1709.1 by Sec. 1, Ch. 185, L. 1969; amd. Sec. 2, Ch. 360, L. 1974; R.C.M. 1947, 16-1709.1.

7-22-2103. County weed board. (1) The board of county commissioners of each county shall appoint a county weed board consisting of three or five members, and:

(a) if a three-member board, two members shall be rural agricultural landowners within the county and one member shall be a teacher of biology or a person with comparable expertise; or

(b) if a five-member board, three members shall be rural agricultural landowners within the county, one member shall be a resident of a city or town within the county, and one member shall be a teacher of biology or a person with comparable expertise.

(2) The county extension agent in each county is an ex officio member of that county's weed board.

(3) The supervisors are public officers.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part); amd. Sec. 14, Ch. 249, L. 1979.

7-22-2104. Term of office. (1) Except as provided in subsection (2), a member of a county weed board serves a term of 3 years and until the qualification of his successor.

(2) When a three-member weed board is established, the initial board members serve terms of 1, 2, and 3 years, respectively, as designated by the commissioners. When a five-member weed board is established, two of the initial members serve terms of 1 year, two serve terms of 2 years, and one serves a term of 3 years. After expiration of an initial term of office, the successor serves a 3-year term as provided in subsection (1).

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part); amd. Sec. 15, Ch. 249, L. 1979.

7-22-2105. Organization of county weed board and compensation. (1) The board of weed control shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board.

(2) Salary, per diem, and mileage of such supervisors shall be set by resolution of the board of county commissioners.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part).

7-22-2106. Noxious weeds and seeds declared nuisance. Noxious weeds and the seed of any noxious weed are hereby declared a common nuisance.

History: Ap. p. Sec. 1, Ch. 195, L. 1939; Sec. 16-1702, R.C.M. 1947; Ap. p. Sec. 1, Ch. 195, L. 1939; amd. Sec. 1, Ch. 360, L. 1974; Sec. 16-1701, R.C.M. 1947; R.C.M. 1947, 16-1701(part), 16-1702(part).

7-22-2107. Unlawful to willfully permit noxious weeds to go to seed. (1) It shall be unlawful to willfully permit any noxious weed, as named in this part or designated by the board of county commissioners of the respective county, to go to seed on any lands within the area of any district.

(2) This section shall apply to all persons, partnerships, corporations, or companies owning, occupying, or controlling lands, easements, or rights-of-way, as well as all county, state, and federally owned and controlled highways and state lands and also all drainage and irrigation ditches, spoil banks, borrow pits, and rights-of-way for canals and laterals within the district.

History: En. Sec. 2, Ch. 195, L. 1939; amd. Sec. 1, Ch. 11, L. 1961; R.C.M. 1947, 16-1706.

7-22-2108. Violations. (1) Any person who in any manner interferes with the supervisors or their deputies and employees in carrying out the provisions of this part or who refuses to obey an order of a supervisor is guilty of a misdemeanor, and upon conviction thereof, he shall be fined not to exceed $100.

(2) All fines, bonds, and penalties collected under the provisions of this part shall be paid to the county treasurer of each county and placed by him to the credit of a fund to be known as the noxious weed fund.

History: En. Sec. 18, Ch. 195, L. 1939; R.C.M. 1947, 16-1722; amd. Sec. 16, Ch. 249, L. 1979.

7-22-2109 through 7-22-2120 reserved.

7-22-2121. Weed control program. The supervisors shall control noxious weeds on all lands within the confines of the district. They shall take particular precautions to control the noxious weeds while preserving beneficial vegetation and wildlife habitat. Where at all possible, methods for such control shall include mowing, chemical, and biological methods.

History: En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973; amd. Sec. 4, Ch. 360, L. 1974; R.C.M. 1947, 16-1719(part).

7-22-2122. Role of county weed board. It shall be the duty of said supervisors to supervise the control program within their county.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part).

7-22-2123. Operation of weed control program. (1) The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation.

(2) (a) Where complaint has been made and the supervisors have reason to believe that noxious weeds described in this part are present upon the lands within the district in violation of the law, they shall forthwith inspect the premises.

(b) If such weeds are found, the supervisors shall cause written notice to be served on the person permitting the same, directing him to comply with the provisions of this part within a period of time specified in said notice.

History: (1)En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; Sec. 16-1713, R.C.M. 1947; (2)En. Sec. 10, Ch. 195, L. 1939; amd. Sec. 2, Ch. 90, L. 1941; Sec. 16-1714, R.C.M. 1947; R.C.M. 1947, 16-1713(part), 16-1714.

7-22-2124. Destruction of weeds by supervisors — report to county clerk. (1) If the notice be not obeyed within the time specified in the notice, the supervisors shall forthwith institute control measures and make report thereof to the county clerk, with a verified, itemized account of their services and expenses in so doing and a description of the lands involved, and shall include in said account the necessary cost and expense of chemicals, man-hours of labor, and equipment employed, at a rate paid, in the immediate vicinity, for labor per day and for equipment used for an 8-hour day.

(2) In effectively controlling such weeds, the supervisors are authorized to take possession and control of any infested tract of land within their district, together with any fences or ditches thereon, and to move any fence or ditch where necessary in order to better conduct the control work. If any fence or ditch be moved, the same shall be replaced upon completion of the control work if requested by the landowner.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part).

7-22-2125. Procedure for destruction of weeds intermingled with crops. (1) When, in the opinion of the supervisors, noxious weeds are intermixed with a growing crop within the district so that the field is a menace to the district, the supervisors shall have power to order the destruction of the same or such parts thereof as may be necessary.

(2) The supervisors may go upon the land infested with the noxious weeds for any purpose necessary to such enforcement. It shall be the duty of the supervisors to confer with the commissioners as a board of arbitration, who, when they deem it proper, may extend for 1 year the order for destruction of the crop containing the noxious weeds.

History: En. Sec. 12, Ch. 195, L. 1939; amd. Sec. 4, Ch. 228, L. 1947; R.C.M. 1947, 16-1716.

7-22-2126. Embargo to prevent introduction of noxious weeds and seeds. Whenever the supervisors have reason to believe that farm products, including seed, which will cause the spread of noxious weeds are about to be introduced into the county, the supervisors shall declare an embargo against the importation of such farm products and seeds into such county.

History: En. Sec. 3, Ch. 195, L. 1939; R.C.M. 1947, 16-1707.

7-22-2127. Acquiring and supplying weed control materials. (1) The supervisors shall have authority to purchase such chemicals, material, and equipment as they determine necessary for carrying on an effective control program. Such materials shall be paid for out of the noxious weed fund.

(2) The supervisors shall also determine what chemicals, material, or equipment which they may have on hand shall be made available for distribution to landowners who may wish to control weeds on their own land. The cost for same shall be charged against the landowner and his land and collected for as is provided in this part.

History: En. Sec. 14, Ch. 195, L. 1939; amd. Sec. 5, Ch. 228, L. 1947; R.C.M. 1947, 16-1718.

7-22-2128 through 7-22-2140 reserved.

7-22-2141. Noxious weed fund authorized. (1) The board of county commissioners of any county in this state may create a noxious weed control and weed seed extermination fund, to be designated the "noxious weed fund".

(2) This fund shall be kept separate and distinct by the county treasurer.

History: En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part).

7-22-2142. Sources of money for noxious weed fund. (1) The board of county commissioners may create the noxious weed fund by either:

(a) appropriating money from the general fund of the county; or

(b) at any time fixed by law for levy and assessment of taxes, levying a tax not exceeding 2 mills on the dollar of total taxable valuation in such county.

(2) The proceeds of the tax shall be used solely for the purpose of promoting the control of noxious weeds or extermination of weed seed in said county and shall be designated to the noxious weed fund.

(3) Any proceeds from work or chemical sales shall revert to the noxious weed fund and shall be available for reuse within the fiscal year.

History: En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part).

7-22-2143. Determination of cost of weed control program. The commissioners shall determine and fix the cost of the control of noxious weeds and of extermination of noxious weed seed in weed districts, whether the same be performed by the individual landowners or by the supervisors.

History: En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part).

7-22-2144. Payment of cost of weed control program. The total cost of such control shall be paid from the noxious weed fund. The cost of controlling such weeds growing along the right-of-way of a state or federal highway shall, upon the presentation by the supervisors of a verified account of the expenses incurred, be paid from the state highway fund. Costs attributed to other lands within the district shall be assessed to and collected from the appropriate holder or owner of interest as set forth in 7-22-2107.

History: En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973; amd. Sec. 4, Ch. 360, L. 1974; R.C.M. 1947, 16-1719(part).

7-22-2145. Expenditures from noxious weed fund. (1) The noxious weed fund shall be expended by the commissioners at such time and in such manner as is deemed best by said supervisors to secure the control and extermination of noxious weeds and weed seed.

(2) Warrants upon such fund shall be drawn by the supervisors. No warrants shall be drawn except upon claims duly itemized by the claimant, except payroll claims which shall be itemized and certified by the supervisors, and each such claim shall be presented to the board of county commissioners for its approval before the warrant therefor shall be countersigned by the commissioners.

History: En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part).

7-22-2146. Financial assistance to landowners for weed control. If in the judgment of the commissioners and supervisors it seems advisable, they may agree to assist the landowners in said district with a part of the cost of weed control on their land. If this is to be done, then in cases where the landowner controls the weeds and exterminates the weed seed, he shall present to the supervisors a duly verified claim for one-third of such cost, and when the same has been approved by the supervisors and commissioners, it shall be paid to such landowner out of the noxious weed fund.

History: **En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part).**

7-22-2147. Allocation of costs when control program carried out by supervisors. When the supervisors do the control and extermination provided for in weed districts, one-third of the cost thereof shall be paid out of the noxious weed fund and the remaining two-thirds shall be charged against the land upon which weed control and weed seed extermination was had. Such two-thirds shall be repaid or collected in the manner hereinbefore provided for.

History: **En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part).**

7-22-2148. Tax liability for payment of weed control expenses. (1) The expenses referred to in 7-22-2124 shall be paid by the county out of the noxious weed fund, and unless the sum to be repaid by the owner or occupant is repaid before the succeeding October 15, the county clerk shall certify the amount thereof, with the description of the land to be charged, and shall enter the same on the assessment list of the county as a special tax on the land. If the land for any reason is exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such charges are collected, they shall be credited to the noxious weed fund.

(2) In determining what lands are included as land covered by the special tax and are described in the certificate of the county clerk, it is presumed that all work done upon any of the land of any one landowner is for the benefit of all of the land within the district belonging to such owner which was contiguous to or joined the parcel upon which the work was done at the time the work was done, together with the parcel upon which the work was done, and the amount certified becomes a tax upon the whole thereof.

History: **En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part); amd. Sec. 17, Ch. 249, L. 1979.**

7-22-2149. Responsibility for assessments and taxes for weed control levied on leased state lands. The lessee of agricultural state land is responsible for assessments and taxes levied by the board of county commissioners for the district as provided in 77-6-114.

History: **En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part).**

7-22-2150. Cooperation with state and federal-aid programs. The supervisors are empowered to cooperate with any state or federal-aid program that becomes available. Under such a plan of cooperation, the direction of the program shall be under the direct supervision of the supervisors of the county in which the program operates.

History: **En. Sec. 17, Ch. 195, L. 1939; amd. Sec. 9, Ch. 228, L. 1947; R.C.M. 1947, 16-1721.**

Part 22

County Control of Noxious Rodents and Other Related Animals

7-22-2201. County to cooperate with others in control of noxious rodents. (1) The boards of county commissioners shall cooperate with the department of livestock in the control and suppression of noxious rodents and related animals, such as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals, when they are injurious to agriculture, other industries, and the public health. This cooperation shall be in accordance with organized and systematic plans of the department of livestock covering the methods and procedures to be followed in the control and suppression of these noxious rodents and related animals.

(2) The boards of county commissioners, in cooperation with the department of livestock, may enter into cooperative agreements with state and federal governmental agencies, counties, associations, corporations, or individuals when cooperation is necessary to promote the control and suppression of noxious rodents and related animals.

History: En. Sec. 1, Ch. 122, L. 1949; amd. Sec. 47, Ch. 310, L. 1974; amd. Sec. 2, Ch. 242, L. 1975; R.C.M. 1947, 16-1175(part).

7-22-2202. Agreements with department of livestock. For the purpose of 7-22-2201, the boards of county commissioners shall enter into written agreements with the department of livestock covering the methods and procedures to be followed in the control and suppression of these noxious rodents and related animals, the extent of supervision to be exercised by the board, and the use and expenditure of funds appropriated.

History: En. Sec. 1, Ch. 122, L. 1949; amd. Sec. 47, Ch. 310, L. 1974; amd. Sec. 2, Ch. 242, L. 1975; R.C.M. 1947, 16-1175(part).

7-22-2203. County rodent control fund established. A county rodent control fund is hereby established, and said fund shall be made permanently available and is hereby appropriated for expenditure by the board of county commissioners in the same manner as provided in 7-22-2205.

History: En. Sec. 4, Ch. 122, L. 1949; R.C.M. 1947, 16-1178(part).

7-22-2204. Financing of noxious rodent control program. (1) The board of county commissioners is authorized to:

(a) appropriate from the county general fund not in excess of $10,000 annually and transfer same to the county rodent control fund; and/or

(b) levy a tax of not to exceed 2 mills on the taxable valuation of all agricultural, horticultural, grazing, and timber lands and their improvements.

(2) The tax provided for in subsection (1)(b) shall be collected as other county taxes and credited to the county rodent control fund.

History: En. Sec. 3, Ch. 122, L. 1949; R.C.M. 1947, 16-1177.

7-22-2205. Expenditures for supplies and services authorized. In order to perform such rodent control work, the boards of county commissioners are authorized to make necessary expenditures from the county rodent control fund for equipment, materials, supplies, and other expenses, including expenditures for personal services, as may be necessary to execute the functions imposed upon them by this part.

History: En. Sec. 2, Ch. 122, L. 1949; R.C.M. 1947, 16-1176.

7-22-2206. Acquisition and sale of rodent control supplies. (1) In addition to the expenditures hereinbefore authorized, the boards of county commissioners are authorized to:

(a) purchase rodent control supplies, including rodent baits, for the use of cooperating governmental agencies, counties, associations, corporations, or individuals in the control of noxious rodents and related animals; and

(b) make these supplies and baits available to such cooperators at approximate cost.

(2) The receipts from the sale of such supplies and rodent baits shall be credited to the county rodent control fund.

History: En. Sec. 4, Ch. 122, L. 1949; R.C.M. 1947, 16-1178(part).

Part 23

County Control of Insect Pests

7-22-2301. Destruction of insect pests authorized. The board of commissioners of any county of this state where there are any insect pests is hereby authorized and empowered to appoint some suitable person or persons whose duty it shall be, acting under the direction of the state department of agriculture, to poison, kill, catch, and exterminate insect pests within such county.

History: En. Sec. 1, Ch. 227, L. 1921; re-en. Sec. 4501, R.C.M. 1921; re-en. Sec. 4501, R.C.M. 1935; amd. Sec. 7, Ch. 433, L. 1975; R.C.M. 1947, 16-1149(part).

7-22-2302. Definition of term insect pest. The term "insect pest" as used in this part shall include grasshopper, cutworm, pale western cutworm, armyworm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticultural crops.

History: En. Sec. 5, Ch. 227, L. 1921; re-en. Sec. 4505, R.C.M. 1921; re-en. Sec. 4505, R.C.M. 1935; amd. Sec. 11, Ch. 433, L. 1975; R.C.M. 1947, 16-1153.

7-22-2303. Compensation of appointee. Any person appointed under the provisions of 7-22-2301 shall receive such compensation as the county commissioners agree to pay, with warrants in payment thereof drawn on the general fund.

History: En. Sec. 2, Ch. 227, L. 1921; re-en. Sec. 4502, R.C.M. 1921; amd. Sec. 1, Ch. 25, L. 1923; re-en. Sec. 4502, R.C.M. 1935; amd. Sec. 8, Ch. 433, L. 1975; R.C.M. 1947, 16-1150.

7-22-2304. Authority to enter private land. Any person appointed pursuant to 7-22-2301 to control insect pests may fly over or enter upon any farm, railroad right-of-way, grounds, or premises infested with such insect pests and poison, kill, catch, and exterminate the insect pests therein.

History: En. Sec. 1, Ch. 227, L. 1921; re-en. Sec. 4501, R.C.M. 1921; re-en. Sec. 4501, R.C.M. 1935; amd. Sec. 7, Ch. 433, L. 1975; R.C.M. 1947, 16-1149(part).

7-22-2305. Acquisition of supplies and equipment. The board of county commissioners of any county may from time to time purchase or contract to hire such quantities and amounts of poisons, traps, and other equipment necessary to poison, kill, catch, or exterminate such insect pests, and warrants in payment thereof shall be drawn on the general fund.

History: En. Sec. 3, Ch. 227, L. 1921; re-en. Sec. 4503, R.C.M. 1921; amd. Sec. 2, Ch. 25, L. 1923; re-en. Sec. 4503, R.C.M. 1935; amd. Sec. 9, Ch. 433, L. 1975; R.C.M. 1947, 16-1151.

7-22-2306. Financing of insect pest control program. (1) The governing body of the county shall annually determine the amount of the warrants drawn on the general fund for the purposes of controlling insect pests under a control program approved by the department of agriculture.

(2) In the succeeding year, the governing body shall levy a tax for the purpose of insect pest extermination sufficient to reimburse the general fund for the money paid out on the warrants. The tax shall be levied upon all the property in the county and shall not exceed 3 mills on each dollar of taxable value.

(3) If there is no money in the general fund with which to pay such warrants, they shall be registered and bear interest in the same manner as other county warrants. In this case, the interest shall be computed and added to the amount for which such tax is levied.

History: En. Sec. 4, Ch. 227, L. 1921; re-en. Sec. 4504, R.C.M. 1921; amd. Sec. 3, Ch. 25, L. 1923; re-en. Sec. 4504, R.C.M. 1935; amd. Sec. 10, Ch. 433, L. 1975; amd. Sec. 8, Ch. 362, L. 1977; amd. Sec. 37, Ch. 566, L. 1977; R.C.M. 1947, 16-1152.

Part 24

Mosquito Control Districts

7-22-2401. Definitions. In this part the following definitions apply:

(1) "Board" means the mosquito control board for any district created under this part.

(2) "Commissioners" means the board of county commissioners of any county.

(3) "District" means any mosquito control district created under the provisions of this part.

(4) "Mosquito" means any insect belonging to the family Culicidae of the order Diptera.

(5) "Mosquito pest" means any group of mosquitoes which annoy man or his domestic animals or transmit any disease of man or of his domestic animals.

History: En. Sec. 1, Ch. 183, L. 1953; amd. Sec. 1, Ch. 337, L. 1973; R.C.M. 1947, 16-4201.

7-22-2402. Mosquito control districts authorized. The board of county commissioners of any county shall have the power to create one or more mosquito control districts within such county in the manner hereinafter provided.

History: En. Sec. 2, Ch. 183, L. 1953; R.C.M. 1947, 16-4202.

7-22-2403. Petition to create mosquito control district — hearing required. (1) When a petition signed by not less than 25% of the qualified electors of the proposed district or 25% of the owners of any property within the boundaries whose names appear as such property owners upon the last-completed assessment roll of the county in which the proposed district is situated is presented to the board of commissioners of the county, asking for the creation of a mosquito control district, the commissioners shall set a day for a hearing on the petition and order notice of the hearing to be given to all persons interested.

(2) The commissioners by resolution shall fix a time for a hearing upon the petition at not less than 2 or more than 4 weeks from the time of presentation thereof unless additional time is needed to prepare a survey and study as authorized by this subsection. Before setting a time for hearing, the commissioners may cause a survey and study of the area sought to be included in such district to be made by competent personnel and may submit a report thereof to the department of health and environmental sciences for its review and recommendations.

History: (1)En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; Sec. 16-4203, R.C.M. 1947; (2)En. Secs. 4, 5, Ch. 183, L. 1953; amd. Secs. 3, 4, Ch. 337, L. 1973; amd. Secs. 2, 3, Ch. 399, L. 1975; Secs. 16-4204, 16-4205, R.C.M. 1947; R.C.M. 1947, 16-4203(1), 16-4204(1), 16-4205(part); amd. Sec. 18, Ch. 249, L. 1979.

7-22-2404. Details relating to petition to create district. (1) The petition provided for in 7-22-2403 shall set forth the boundaries of the proposed district and request that the property within the boundaries be organized into a mosquito control district.

(2) Sufficient funds to defray the cost of mailing, publication, and posting of notice shall accompany the petition.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; R.C.M. 1947, 16-4203(part).

7-22-2405. Inclusion of cities and towns within district. Such proposed district may include any incorporated or unincorporated city or town of the county.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; R.C.M. 1947, 16-4203(part).

7-22-2406. Notice of hearing on petition to create district. (1) If addresses are known, the commissioners shall cause notice of the hearing provided for in 7-22-2403 to be mailed to each nonresident owner of taxable real and personal property within the proposed district.

(2) The commissioners shall cause notice to be posted in three public places within the district. Whenever the district is partly in one county and partly in another county, notice must be posted in each county but posting need not be in three places in each county.

(3) The commissioners shall also cause notice to be given of the time and place of the hearing and the methods of objection by publication in a newspaper within or nearest to the district and, if the district is partly in one county and partly in another county, in a newspaper in each county, if such newspaper exists. The publication must be for two weekly issues.

(4) Posting and first publication shall be at least 10 days before the hearing.

History: En. Sec. 4, Ch. 183, L. 1953; amd. Sec. 3, Ch. 337, L. 1973; amd. Sec. 2, Ch. 399, L. 1975; R.C.M. 1947, 16-4204(part); amd. Sec. 19, Ch. 249, L. 1979.

7-22-2407. Notice to include information relating to protest. The notice shall state that any qualified elector or owner of property lying within the boundaries of the proposed district may appear before the board at the time of hearing and show cause why the district should not be created or may file his written objection to creation of the district at any time before the date of said hearing.

History: En. Sec. 4, Ch. 183, L. 1953; amd. Sec. 3, Ch. 337, L. 1973; amd. Sec. 2, Ch. 399, L. 1975; R.C.M. 1947, 16-4204(part).

7-22-2408. Hearing on petition to create district. (1) At the time fixed for said hearing, the commissioners shall determine whether or not the petition complies with the requirements hereinbefore set forth and whether or not the notice has been published and posted as required.

(2) At such hearing, the board must hear all competent and relevant testimony offered in support of or in opposition to said petition and creation of said district and shall also consider the written objections to the creation of the district.

(3) Except as provided in 7-22-2409, if the commissioners, upon such hearing, determine there has been compliance with all of the requirements herein set forth, they shall, by an order duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the description of land contained therein.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part).

7-22-2409. Adjournment of hearing. (1) Said hearing may be adjourned from time to time for determination of facts, but no adjournment shall exceed 2 weeks in all from and after the date originally noticed and published for the hearing.

(2) (a) Where at the time of the hearing the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of health and environmental sciences to determine if it would be advisable to exclude the geographical area from the district.

(b) Upon reconvening, the commissioners shall define and establish such boundaries as are advisable.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part).

7-22-2410. Protest to creation of district. (1) At the hearing provided for in 7-22-2403 or at any time following the first publication of notice of such hearing until the time of said hearing, any qualified elector or an owner of property within the proposed district may file his written objections to the creation of the district. Such objections shall be delivered to the county clerk, who shall endorse thereon the date of its receipt by him.

(2) If 51% or more of the qualified electors or of the owners of property within the boundaries of the proposed district file their written objections to the creation of such district, the commissioners shall not proceed with the creation of such district.

(3) If as the result of objections filed the commissioners in their discretion determine the question in doubt whether or not the creation of a district is to the best interest of an area and the residents therein, the commissioners may cause the issue to be determined by referendum at the next regular election.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part).

7-22-2411. District to be governed by appointed mosquito control board. (1) Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board composed of not less than three or more than five members.

(2) Each member of the mosquito control board shall be an elector within the boundaries of the district.

(3) The board is a body corporate and shall act as such, and the members are public officers.

(4) The health officer having jurisdiction in the proposed district, the sanitarian or a member of his staff, and the county extension agent, if the county has any or all such officers, are ex officio members of the board without vote.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part); amd. Sec. 20, Ch. 249, L. 1979.

7-22-2412. Term of office. (1) The terms of office for the first appointed members shall be so arranged that they do not all expire at the same time and for that purpose may be set for any length of time not more than 3 years.

(2) Thereafter the terms of all members shall be 3 years, the term of one member expiring on January 1 in each year.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

7-22-2413. Compensation. All such board members shall serve without pay. The appointed members shall receive per diem as allowed by state law for each day when the board is actually in session and their necessary mileage as provided by law.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

7-22-2414. Organization of mosquito control board. The members of the mosquito control board shall organize each year by choosing a chairman, who shall be from among the appointed members, and a secretary.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

7-22-2415. Powers of mosquito control board. The mosquito control board shall have power to:

(1) develop and administer a program for the abatement and alleviation of mosquito pest conditions within the district;

(2) employ such suitable and competent assistants and employees as may be necessary and provide for their compensation;

(3) purchase, rent, or execute leasing agreements for such equipment and material as they may determine to be necessary for carrying on an effective control program;

(4) cooperate with any corporation, association, individual, or group of individuals, including any agency of the federal or state governments, in a mosquito abatement program;

(5) receive gifts, grants, or donations for the purpose of advancing its program;

(6) take such action as may be necessary or advisable to survey, control, modify, or abate any condition which may or does contribute to the existence of the mosquito pest and for this purpose enter upon any premises located within the said district, through its members, employees, or agents.

History: **En. Sec. 8, Ch. 183, L. 1953; R.C.M. 1947, 16-4208.**

7-22-2416. Implementation of mosquito control program. (1) Whenever there exists within the district any condition which unnecessarily contributes to the production of mosquitoes and in the judgment of the board it is reasonably feasible for the owner of the land on which such condition exists to remove, correct, or prevent the same, the board shall have the power to notify such landowner in writing to remove, correct, or destroy such condition within a reasonable time, to be specified in such notice, and to prevent the recurrence thereof.

(2) The board shall provide for a hearing whenever there is a condition upon the land in need of attention as provided for and in keeping with the provisions of this part. The board shall determine from the evidence presented at the hearing whether the above-mentioned condition does exist and shall order compliance in keeping with the provisions of this part. The landowner shall have the right of appeal, which appeal shall be conducted in the same manner as appeals in civil action.

History: **En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(a).**

7-22-2417. Unlawful to interfere with mosquito control personnel. Any person who in any manner willfully interferes with the mosquito control board or its officers, agents, or employees in carrying out the provisions of this part shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed the sum of $100. If the court should so determine, such person shall also be subject to the requirement of giving a bond to keep the peace to prevent further interference with the work of said officials or their agents and employees.

History: **En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(b).**

7-22-2418. Relationship of mosquito control districts and boards with department of health and environmental sciences and department of agriculture. (1) It shall be the duty of the department of health and environmental sciences to advise the commissioners of any county relative to the creation of mosquito control districts within such county and upon request to advise the boards of such districts in connection with their control programs.

(2) Annually on or before February 1, the board of each district shall submit to the department of health and environmental sciences and the

department of agriculture, for their review and advice, a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year.

History: En. Sec. 9, Ch. 183, L. 1953; amd. Sec. 1, Ch. 2, L. 1969; amd. Sec. 7, Ch. 337, L. 1973; R.C.M. 1947, 16-4209.

7-22-2419. Establishment and operation of joint mosquito control districts. (1) Joint mosquito control districts (that is, districts which lie partly in one county and partly in another) may be created or dissolved in the same manner as provided in this part for other districts, except that in such cases all petitions must be directed to the commissioners of each county affected and must be acted upon by them concurrently.

(2) In the case of such districts, the mosquito control board shall be constituted in the same manner and shall have the same powers as are provided for other boards in this part, except that appointments shall be made by joint action of the commissioners in all counties affected and each county shall be represented among the appointed members of the board. The county health officer, county sanitarian, and county extension agent of each county shall be ex officio members of the board without vote.

History: En. Sec. 13, Ch. 183, L. 1953; R.C.M. 1947, 16-4213(part).

7-22-2420. Scope of part. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part shall be controlling.

History: En. Sec. 14, Ch. 183, L. 1953; R.C.M. 1947, 16-4214.

7-22-2421 through 7-22-2430 reserved.

7-22-2431. Mosquito control fund. (1) The board of county commissioners of any county within which a mosquito control board has been created shall establish a mosquito control fund.

(2) Warrants upon such fund shall be drawn by the board of county commissioners upon the presentation of claims approved by the mosquito control board.

History: En. Sec. 10, Ch. 183, L. 1953; amd. Sec. 1, Ch. 22, L. 1969; R.C.M. 1947, 16-4210(part).

7-22-2432. Levy of district taxes — limit on mill levy. (1) At the time fixed by law for levy and assessment of taxes, the board of county commissioners of any county within which a mosquito control board has been created shall levy a tax not exceeding 5 mills on the dollar of the total taxable valuation in such district on all property situated within the said district.

(2) The proceeds of the tax shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which such mosquito control district was created.

History: En. Sec. 10, Ch. 183, L. 1953; amd. Sec. 1, Ch. 22, L. 1969; R.C.M. 1947, 16-4210(part).

7-22-2433. Tax levy for joint mosquito control districts. The annual tax levy for joint mosquito control districts, if any, shall be made by agreement of the commissioners of all counties affected and shall apply uniformly throughout such joint districts.

History: En. Sec. 13, Ch. 183, L. 1953; R.C.M. 1947, 16-4213(part).

7-22-2434. Disposition of fines, bonds, and penalties. All fines, forfeited bonds, and penalties collected under the provisions of this part shall be paid to the county treasurer of each county and placed by him to the credit of the mosquito control fund.

History: En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(c).

7-22-2435 through 7-22-2440 reserved.

7-22-2441. Annexation of land to mosquito control district. Any such district at any time subsequent to its creation may be enlarged to include adjacent land upon the presentation to the board of county commissioners of a petition signed by not less than 25% of the electors within the adjacent land or 25% of the owners of any property lying within the boundaries of the area proposed to be annexed to the district whose names appear as such property owners upon the last-completed assessment role of the county in which the said proposed area is situated.

History: En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).

7-22-2442. Hearing on petition for annexation — notice. If any such petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for hearing thereon and shall cause notice thereof to be given in the manner provided by 7-22-2406 and 7-22-2407.

History: En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).

7-22-2443. Decision on petition for annexation. (1) Except as provided in subsection (2), if, upon the hearing provided for in 7-22-2242, the commissioners believe it to be to the best interests of the area and those resident therein that such area be annexed to the district, they shall, by an order duly made and entered on their minutes, declare the area in question to be annexed to the district, and such annexed area shall thenceforth be considered a part of such district for all purposes as originally included therein.

(2) (a) If 51% or more of the qualified electors or of the property owners in the area proposed to be annexed to the district file their objections to the creation of such district, the commissioners shall not act on such petition.

(b) If as a result of objections filed the commissioners in their discretion determine the question in doubt whether or not the annexation of the area is to the best interest of the area and of the residents therein, the commissioners may cause the issue to be decided by referendum at the next regular election.

History: En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).

7-22-2444. Effect of annexation. If such additional area is added, such territory shall be subject to the tax authorized by this part together with the preexisting area of the district. Such tax shall be uniform for the area added and the territory in the district as enlarged.

History: En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).

7-22-2445. Dissolution of mosquito control district. A mosquito control district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least 51% of the qualified electors or of the property owners within the district.

History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).

7-22-2446. Hearing on petition for dissolution — notice. Upon the filing of a petition for dissolution, the board of county commissioners shall set a time for hearing the petition and shall cause notice thereof to be mailed to all nonresident property owners within the district whose addresses are known, to be posted in at least three public places within the district, and to be published at least once in the official newspaper of the county published in the district, the posting and publication to be at least 10 days before the date of hearing. Whenever the district is partly in one county and partly in another county, notice must be posted in each county, but posting need not be in three places in each county, and notice must be published in the official newspaper of each county.

History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part); amd. Sec. 21, Ch. 249, L. 1979.

7-22-2447. Decision on petition for dissolution. The commissioners shall enter upon their minutes an order dissolving such district if, upon the hearing provided for in 7-22-2446, the commissioners find:

(1) such petition to be sufficient;

(2) that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations; and

(3) that there is good reason for the dissolution of such district.

History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).

7-22-2448. Effect of dissolution. (1) The effective date of such dissolution shall be set by the commissioners at such time within the fiscal year as best conforms with the operations of the county budget, provided that before the dissolution shall be effective for all purposes, the mosquito control board of the district shall certify to the commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with legal proof thereof.

(2) (a) Any funds unexpended at the dissolution of a district shall be paid over into the county general fund. Where the district is partly in one county and partly in another county, the funds shall be apportioned between the counties and such apportionment shall be based on the taxable value of the property which is within the district.

(b) Physical assets may be liquidated as provided for in 7-8-2211 through 7-8-2220. Where the district is partly in one county and partly in another county, the proceeds of the sale of physical assets will be apportioned in like manner as the liquid assets.

History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).

Parts 25 through 40 reserved

Part 41

Municipal Weed Control

7-22-4101. Control of noxious weeds within municipality. The city or town council has power to:

(1) declare and determine what vegetation within the city or town shall be noxious weeds;

(2) provide the manner in which they shall be exterminated;

(3) require the owner or owners of any property within said city or town to exterminate or remove noxious weeds from their premises and the one-half of any road or street lying next to the land or boulevard abutting thereon; and

(4) provide, in the event the owner or owners of any of said premises neglect to exterminate or remove the noxious weeds therefrom, for levying the cost of such extermination or removal as a special tax against the property.

History: En. Subd. 83, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.82, R.C.M. 1935; R.C.M. 1947, 11-985.

CHAPTER 23

DOMESTIC ANIMAL CONTROL AND PROTECTION

Part 1 — Local Government Control of Dogs

Section

7-23-101. Dog collar and license tag required.
7-23-102. Seizure and impounding of dogs running at large without tag.
7-23-103. Local government cooperation in the operation of pounds.
7-23-104. Violations.
7-23-105. Disposition of fines.

Parts 2 through 20 reserved

Part 21 — County Control of Dogs

7-23-2101 through 7-23-2107. Repealed. Sec. 3, Ch. 208, L. 1979.
7-23-2108. County control of dogs.
7-23-2109. Vicious dog control.
Section 7-23-2110 reserved.
7-23-2111 through 7-23-2117. Repealed. Sec. 3, Ch. 208, L. 1979.

Parts 22 through 40 reserved

Part 41 — Municipal Control and Protection of Domestic Animals

7-23-4101. Control of animals running at large.
7-23-4102. Licensing of dogs.
7-23-4103. Relation of municipal dog license tags to other laws.
7-23-4104. Cruelty to animals.

Part 1

Local Government Control of Dogs

7-23-101. Dog collar and license tag required. It shall be unlawful, where this part, part 21, and 7-23-4103 apply, for any person to own, harbor, or keep any dog over the age of 5 months or to permit such a dog owned, harbored, or controlled by him to run at large unless the dog has attached to its neck a substantial collar on which is fastened a license tag issued by the authority of a county or a municipal corporation for the purpose of identifying the dog and designating the owner; provided, however, that it shall be lawful to remove such collar and license tag when such dog is under the immediate control of its owner or his agent.

History: En. Sec. 1, Ch. 280, L. 1959; R.C.M. 1947, 16-4601.

7-23-102. Seizure and impounding of dogs running at large without tag. Any dog found running at large without a valid current dog license tag issued by the authority of a county or municipal corporation pursuant to the provisions of this part, part 21, and 7-23-4103 may be seized and impounded by any sheriff, deputy sheriff, policeman, game warden, county poundmaster, or other law enforcement officer.

History: En. Sec. 5, Ch. 280, L. 1959; R.C.M. 1947, 16-4605.

7-23-103. Local government cooperation in the operation of pounds. The board of county commissioners may enter into contracts with municipal corporations for the use by the county or by the municipal corporation of the impounding facilities of the other.

History: En. Sec. 7, Ch. 280, L. 1959; R.C.M. 1947, 16-4607(part).

7-23-104. Violations. Violation of any provision of this part or part 21 shall constitute a misdemeanor.

History: En. Sec. 13, Ch. 280, L. 1959; R.C.M. 1947, 16-4613.

7-23-105. Disposition of fines. All fines collected under the provisions of this part and part 21 shall be paid into the county treasury and shall be used to pay fees, salaries, costs, or expenses for the enforcement of this part and part 21.

History: En. Sec. 12, Ch. 280, L. 1959; R.C.M. 1947, 16-4612(part).

Parts 2 through 20 reserved

Part 21

County Control of Dogs

7-23-2101 through 7-23-2107. Repealed. Sec. 3, Ch. 208, L. 1979.

7-23-2108. County control of dogs. (1) The governing body of the county has power to regulate, restrain, or prohibit the running at large of dogs by the adoption of an ordinance which substantially complies with the provisions of 7-5-103 through 7-5-107 and which may provide for the wearing of a license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps, or harbors the dog.

(2) The county governing body is authorized to impound, sell, kill, or otherwise destroy dogs found at large contrary to ordinances.

(3) Nothing in this section restricts the governing body from enacting dog control measures in a portion of the county only.

History: En.Sec. 1, Ch. 208, L. 1979.

7-23-2109. Vicious dog control. (1) The county governing body may regulate, restrain, control, kill, or quarantine any vicious dog, whether such dog is licensed or unlicensed, by the adoption of an ordinance which substantially complies with the provisions of 7-5-103 through 7-5-107.

(2) A violation of any ordinance established as provided in subsection (1) is a misdemeanor.

(3) For purposes of this section, a "vicious dog" is defined as one which bites or attempts to bite any human being without provocation or which harasses, chases, bites, or attempts to bite any other animal. The term "animal" includes all livestock and any domestic pet.

History: En. Sec. 2, Ch. 208, L. 1979.

7-23-2110 reserved.

7-23-2111 through 7-23-2117. Repealed. Sec. 3, Ch. 208, L. 1979.

Parts 22 through 40 reserved

Part 41

Municipal Control and Protection of Domestic Animals

7-23-4101. Control of animals running at large. The city or town council has power to regulate, restrain, or prohibit the running at large of horses, cattle, swine, sheep, goats, and dogs or other animals and to authorize the impounding and sale thereof if found at large contrary to ordinances.

History: En. Subd. 36, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.35, R.C.M. 1935; R.C.M. 1947, 11-938.

7-23-4102. Licensing of dogs. The city or town council has power to license the keeping of dogs and to provide for the killing or destruction thereof if found running at large without license.

History: En. Subd. 37, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.36, R.C.M. 1935; R.C.M. 1947, 11-939.

7-23-4103. Relation of municipal dog license tags to other laws. Any dog license tag issued annually by any municipal corporation pursuant to an ordinance which substantially complies with parts 1 and 21 and which provides for the wearing of the license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps, or harbors the dog constitutes compliance with the licensing provisions of parts 1 and 21.

History: **En. Sec. 4, Ch. 280, L. 1959; R.C.M. 1947, 16-4604.**

7-23-4104. Cruelty to animals. The city or town council has power to prohibit and punish cruelty to animals.

History: **En. Subd. 32, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.31, R.C.M. 1935; R.C.M. 1947, 11-934.**

CHAPTERS 24 THROUGH 30

RESERVED

CHAPTER 31

GENERAL EMERGENCY AND PROTECTIVE SERVICES

Part 1 — Smoke Abatement

Section

7-31-101. Authorization for smoke abatement program.
7-31-102. Petition for smoke abatement program.
7-31-103. Contract for smoke abatement.
7-31-104. Contractor's bond.
7-31-105. Modification of contract.
7-31-106. Authorization for county to issue bonds — election required.
7-31-107. Authorization for municipality to issue bonds — election required.
7-31-108. Notice of election.
7-31-109. Conduct of election.
7-31-110. Effect of election.
7-31-111. Cost of election in case of voter disapproval.
7-31-112. Details relating to bonds.
7-31-113. Disposition of bonds.
7-31-114. Disposition of sale proceeds — sanitary coupon bond fund.
7-31-115. Disbursement of money.
7-31-116. Payment of bonds and other obligations.

Parts 2 through 20 reserved

Part 21 — General Provisions Affecting Counties

7-31-2101. Authorization to transfer funds for emergency relief.

Parts 22 through 40 reserved

Part 41 — General Provisions Affecting Municipalities

7-31-4101. Board of health.
7-31-4102. Sales of poisons and opium.
7-31-4103. Ditches, drains, and flumes in municipalities.
7-31-4104. Suppression of fraud and immoral publications.

Part 42 — Open Ditches

7-31-4201. Findings and purpose.
7-31-4202. Interpretation of part.

7-31-4203. Open ditch declared nuisance.
7-31-4204. Investigation and remedial measures related to open ditches.
7-31-4205. Procedure to close and fill ditch — notice.
7-31-4206. Procedure to maintain open ditch.
7-31-4207. Exemption for commercial irrigation ditches — improvement districts for protection from open ditches.

Part 1

Smoke Abatement

7-31-101. Authorization for smoke abatement program. It shall be lawful for any county or incorporated city or town in any county in this state where injurious and unhealthy smoke and fumes exist to make contracts for the abatement thereof and to issue and dispose of bonds for that purpose, subject to the limitations and conditions provided in this part.

History: En. Sec. 1, p. 142, L. 1893; re-en. Sec. 4831, Pol. C. 1895; re-en. Sec. 3430, Rev. C. 1907; re-en. Sec. 5289, R.C.M. 1921; re-en. Sec. 5289, R.C.M. 1935; R.C.M. 1947, 11-2501.

7-31-102. Petition for smoke abatement program. Wherever a petition is presented to the board of county commissioners of any county or to the council of any incorporated city or town, signed by at least 100 of the resident taxpayers of such county or incorporated city or town, requesting that a contract be made and vote taken under this part, it shall be the duty of the board of county commissioners of such county or the council of such incorporated city or town, as the case may be, to enter into and make a contract for the abatement of such injurious and unhealthy smoke or fumes or for conducting or carrying the same away, so as to remove or lessen the injurious and unhealthy results thereof as effectually as the same can be done.

History: En. Sec. 2, p. 142, L. 1893; re-en. Sec. 4832, Pol. C. 1895; re-en. Sec. 3431, Rev. C. 1907; re-en. Sec. 5290, R.C.M. 1921; re-en. Sec. 5290, R.C.M. 1935; R.C.M. 1947, 11-2502(part).

7-31-103. Contract for smoke abatement. (1) The smoke abatement contract shall:

(a) be entered into and made with such person or persons or corporation or corporations and contain such provisions and conditions as will, in the opinion of the board of county commissioners or the council of said incorporated town or city, as the case may be, best accomplish the purpose aforesaid; and

(b) take effect and be in force as provided in this part.

(2) Whenever a contract shall have been entered into as aforesaid, it shall be reduced to writing and executed by the parties in due form of law and three copies thereof deposited with the clerk of the board of county commissioners or clerk of the council, as the case may be, for public inspection and examination.

History: (1)En. Sec. 2, p. 142, L. 1893; re-en. Sec. 4832, Pol. C. 1895; re-en. Sec. 3431, Rev. C. 1907; re-en. Sec. 5290, R.C.M. 1921; re-en. Sec. 5290, R.C.M. 1935; Sec. 11-2502, R.C.M. 1947; (2)En. Sec. 3, p. 143, L. 1893; re-en. Sec. 4833, Pol. C. 1895; re-en. Sec. 3432, Rev. C. 1907; re-en. Sec. 5291, R.C.M. 1921; re-en. Sec. 5291, R.C.M. 1935; Sec. 11-5203, R.C.M. 1947; R.C.M. 1947, 11-2502(part), 11-2503(part).

7-31-104. Contractor's bond. The person or persons or corporation or corporations with whom said contract shall have been made shall execute their or its bond or bonds, with sufficient sureties, to such board of county commissioners or city or town, conditioned for the full and faithful performance of all the terms and conditions on their part. The terms, conditions, and penalty of the surety bond shall be approved by the contracting board or council. The surety bond or bonds shall be in full force and effect upon the ratification of the contract as provided in this part, the condition of which shall be expressed in the contract.

History: En. Sec. 3, p. 143, L. 1893; re-en. Sec. 4833, Pol. C. 1895; re-en. Sec. 3432, Rev. C. 1907; re-en. Sec. 5291, R.C.M. 1921; re-en. Sec. 5219, R.C.M. 1935; R.C.M. 1947, 11-2503(part).

7-31-105. Modification of contract. In the event it shall be found expedient and proper in executing said contract to modify or change the same in some of the minute details thereof and such modifications or changes shall be agreed upon by the parties thereto, the same may be made with the approval of the judge or judges of the district forming such county or the judge or judges of the district in which such county or incorporated city or town is included and, when so approved, shall have the same force and effect as if originally contained therein.

History: En. Sec. 10, p. 146, L. 1893; re-en. Sec. 4840, Pol. C. 1895; re-en. Sec. 3439, Rev. C. 1907; re-en. Sec. 5298, R.C.M. 1921; re-en. Sec. 5298, R.C.M. 1935; R.C.M. 1947, 11-2510.

7-31-106. Authorization for county to issue bonds — election required. (1) If the petition is presented to the board of county commissioners, it shall be the duty of the board, for the purpose of raising money to meet the payments under the terms and conditions of said contract and other necessary and proper expenses in and about the same and for the approval or disapproval thereof:

(a) to ascertain, within 30 days after submission of the petition, the existing indebtedness of the county in the aggregate; and

(b) to submit, within 60 days after ascertaining the same, to the electors of such county the proposition to approve or disapprove the contract and the issuance of bonds necessary to carry out the same.

(2) The amount of the bonds authorized by this section shall not exceed 5% of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained by the last assessment for state and county taxes previous to the issuance of said bonds and incurring of said indebtedness.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part).

7-31-107. Authorization for municipality to issue bonds — election required. (1) If said petition is presented to the council of any incorporated city or town, the council, for the purpose of raising money to meet the payments under the terms and conditions of said contract and other necessary and proper expenses in and about the same and for the approval or disapproval thereof:

(a) shall ascertain, within 30 days after submission of the petition, the aggregate indebtedness of such city or town; and

(b) shall submit, within 60 days after ascertaining the same, to the electors of such city or town the proposition to approve or disapprove said contract and the issuance of bonds necessary to carry out the same.

(2) The amount of the bonds authorized by this section shall not exceed 3% of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained in the manner provided in this part.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part).

7-31-108. Notice of election. (1) The board of county commissioners of the county in which such election is to be held or the council of the incorporated city or town, as the case may be, shall give notice of such election, stating:

(a) the objects thereof;

(b) the time and place of holding the same;

(c) such conditions of the contract as in their judgment are proper and necessary to enable the electors to vote intelligently upon the proposition submitted to them;

(d) the amount of bonds proposed to be issued, when payable, and the interest they are to bear; and

(e) a description of the tickets or ballots to be used.

(2) The notice shall be given at least three times a week for at least 6 consecutive weeks next preceding such election in some newspaper printed and published and circulated in the county, city, or town, as the case may be, in which such election shall be held and if no newspaper be printed, published, and circulated therein, then in some newspaper printed and published in some county nearest thereto.

History: En. Sec. 6, p. 144, L. 1893; re-en. Sec. 4836, Pol. C. 1895; re-en. Sec. 3435, Rev. C. 1907; re-en. Sec. 5294, R.C.M. 1921; re-en. Sec. 5294, R.C.M. 1935; R.C.M. 1947, 11-2506.

7-31-109. Conduct of election. (1) The vote upon such proposition shall be had at an election for that purpose to be held, conducted, and counted and with results ascertained and determined in the manner and by the same officers provided by law for general elections, except as otherwise provided herein.

(2) The proposition to be submitted shall be upon printed tickets or ballots, upon each of which shall be printed the following: "For the contract and bonds" and "Against the contract and bonds", the former above the latter. The elector shall indicate his vote by a cross opposite the one or the other for which he votes.

(3) No registration under the election laws of this state shall be required for the purposes of the election herein provided for, and the registration had at the last election preceding the same shall govern and control as if especially had and done for the purpose of the election to be held under this part.

History: (1), (2)En. Sec. 5, p. 144, L. 1893; re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. 3434, Rev. C. 1907; re-en. Sec. 5293, R.C.M. 1921; re-en. Sec. 5293, R.C.M. 1935; Sec. 11-2505, R.C.M. 1947; (3)En. Sec. 11, p. 146, L. 1893; re-en. Sec. 4841, Pol. C. 1895; re-en. Sec. 3440, Rev. C. 1907; re-en. Sec. 5299, R.C.M. 1921; re-en. Sec. 5299, R.C.M. 1935; Sec. 11-2511, R.C.M. 1947; R.C.M. 1947, 11-2505(part), 11-2511.

7-31-110. Effect of election. (1) If a majority of the votes cast were for the contract and bonds, then the contract is in full force and effect and the bonds shall be issued and disposed of in the manner provided in this part.

(2) If there was a tie vote or a majority of the votes were cast against the contract and bonds, then the contract and surety bond given for its fulfillment are void and the bonds shall not be issued.

History: En. Sec. 5, p. 144, L. 1893; re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. 3434, Rev. C. 1907; re-en. Sec. 5293, R.C.M. 1921; re-en. Sec. 5293, R.C.M. 1935; R.C.M. 1947, 11-2505(part); amd. Sec. 1, Ch. 263, L. 1979.

7-31-111. Cost of election in case of voter disapproval. If the proposition submitted to the voters pursuant to 7-31-106 or 7-31-107 is disapproved, the expenses of such election shall be paid out of the general fund of such county, city, or town, as the case may be.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part).

7-31-112. Details relating to bonds. (1) The bonds to be issued upon the conditions and under the provisions aforesaid shall:

(a) bear the date of their issuance;

(b) be designated as sanitary coupon bonds of the county, city, or town issuing the same;

(c) be of a denomination not less than $500 or more than $1,000 each;

(d) be payable at such place in New York City or elsewhere, at the discretion of the board or council issuing the same;

(e) bear interest at the rate of 6% per annum, payable 30 years after the date thereof, with the privilege of paying the same at any time after 5 years from such date, which interest shall be payable semiannually at the place whereat the principal is payable and for which interest coupons shall be attached to said bonds.

(2) If said bonds and coupons are issued by any county, they shall be signed by the chairman of the board of county commissioners of such county and attested by the clerk thereof and his seal attached thereto. If the bonds and coupons are issued by any incorporated city or town, the same shall be signed by the mayor and attested to by the city or town clerk and the seal thereof attached.

History: En. Sec. 7, p. 145, L. 1893; re-en. Sec. 4837, Pol. C. 1895; re-en. Sec. 3436, Rev. C. 1907; re-en. Sec. 5295, R.C.M. 1921; re-en. Sec. 5295, R.C.M. 1935; R.C.M. 1947, 11-2507.

7-31-113. Disposition of bonds. (1) The board of county commissioners or council, as the case may be:

(a) may provide by said contract for the delivery of said bonds or any part thereof at their face value, upon the terms and conditions provided in said contract; or

(b) may sell and dispose of the same or any part thereof to raise funds to carry out said contract and use such funds for that purpose and for the payment of any expert or experts or any incidental expenses proper and necessary in and about said contract and the carrying out of the same.

(2) In the event said bonds are sold, they shall be sold for cash to the highest bidder, after public notice by publication in a paper of general circulation which may be printed and published in each county in the state and also by publication in at least three newspapers of general circulation printed and published in the cities of Boston and New York. Such notice shall be

published at least once a week and shall contain, in substance, a description of said bonds as set out in 7-31-112.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

7-31-114. Disposition of sale proceeds — sanitary coupon bond fund. The proceeds of the sales of bonds:

(1) shall be paid over to the county treasurer, the city treasurer, or the town clerk, as the case may be, and kept as a separate and independent fund for the purposes herein provided, to be known as the sanitary coupon bond fund; and

(2) shall be deposited and kept in such a manner and at such bank or banks as the board of county commissioners of the county or council of the city or town owning such funds may direct.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

7-31-115. Disbursement of money. Money in the sanitary coupon bond fund shall not be paid out or disbursed except upon warrants or orders drawn thereon by the board of county commissioners or council of such incorporated city or town, signed and attested in the manner provided by law.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

7-31-116. Payment of bonds and other obligations. (1) The faith of the county or incorporated city or town issuing bonds under the provisions of this part is solemnly pledged for the payment of the principal and interest according to the tenure of said bonds and the coupons attached to the same.

(2) The board of county commissioners of the county or council of the incorporated city or town issuing said bonds:

(a) shall ascertain and levy and assess a tax sufficient to pay the interest upon said bonds, which shall become a lien and be collected as other taxes; and

(b) shall form such sinking fund for the payment of the principal thereof as may be necessary and proper, in the manner provided by law or ordinance, which shall be kept as a separate fund.

(3) All bonds, coupons, orders, and warrants issued and drawn under the provisions of this part shall be promptly paid, registered, and entered in books kept for that purpose, with correct and proper entries made in respect thereto, and the same, when paid, shall be canceled and preserved, with proper entries made thereof, as provided by law in cases of other bonds, warrants, and orders.

History: En. Sec. 9, p. 146, L. 1893; re-en. Sec. 4839, Pol. C. 1895; re-en. Sec. 3438, Rev. C. 1907; re-en. Sec. 5297, R.C.M. 1921; re-en. Sec. 5297, R.C.M. 1935; R.C.M. 1947, 11-2509.

Parts 2 through 20 reserved

Part 21

General Provisions Affecting Counties

7-31-2101. Authorization to transfer funds for emergency relief. Whenever the governor shall issue a proclamation declaring that an emergency exists in any county requiring the relief of suffering of the inhabitants thereof caused by famine, destitution, conflagration, or other public calamity, the board of county commissioners of such county is authorized to transfer to the proper fund to be used for purposes of such relief any money in any other fund or funds of the county, but no money belonging to any bond sinking or interest fund or any school fund must be so transferred. The governor shall in his proclamation state the facts upon which such emergency is declared and shall specifically limit the time during which such transfers may be made.

History: En. Sec. 1, Ch. 43, L. 1933; re-en. Sec. 4470.3, R.C.M. 1935; R.C.M. 1947, 16-1107.

Parts 22 through 40 reserved

Part 41

General Provisions Affecting Municipalities

7-31-4101. Board of health. The city or town council has power to provide for a board of health and to prescribe its powers and duties and, when such board of health is provided, for the same to have jurisdiction within the city or town limits and within 3 miles thereof.

History: En. Subd. 44, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.43, R.C.M. 1935; R.C.M. 1947, 11-946.

7-31-4102. Sales of poisons and opium. (1) The city or town council has power to regulate the sales of poisons and to punish any person for selling or using opium or any preparation thereof, for having the same or any implement to be used in smoking it in his possession, or for keeping, maintaining, visiting, or contributing to the support of a room or place where the same is smoked or used.

(2) Druggists may sell opium or any preparation thereof, subject to the general laws of the state in relation thereto.

History: En. Subd. 61, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.60, R.C.M. 1935; R.C.M. 1947, 11-963.

7-31-4103. Ditches, drains, and flumes in municipalities. The city or town council has power to regulate the use and construction of irrigating ditches, drains, and flumes within or running through any city or town.

History: En. Subd. 82, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.81, R.C.M. 1935; R.C.M. 1947, 11-984.

7-31-4104. Suppression of fraud and immoral publications. The city or town council has power to suppress and punish all fraudulent devices and practices for the purpose of obtaining money or property and to prohibit the same or exhibition of immoral publications, prints, pictures, or illustrations.

History: En. Subd. 20, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.19, R.C.M. 1935; R.C.M. 1947, 11-922.

Part 42

Open Ditches

7-31-4201. Findings and purpose. (1) The legislature declares that the control of ditchwater in inhabited areas of Montana is affected with the public interest.

(2) The purpose of this part is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town.

History: En. Sec. 1, Ch. 63, L. 1961; amd. Sec. 1, Ch. 306, L. 1969; R.C.M. 1947, 11-4001(part).

7-31-4202. Interpretation of part. (1) This part shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace, and safety of the people of Montana. This part shall be construed merely as a regulation in the public interest so that the diversion, transportation, and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this part.

(2) Nothing in this part shall be construed as intending to effectuate the abandonment of any valid water right.

History: En. Sec. 1, Ch. 63, L. 1961; amd. Sec. 1, Ch. 306, L. 1969; R.C.M. 1947, 11-4001(part).

7-31-4203. Open ditch declared nuisance. Notwithstanding any provision contained in Title 85 or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an open ditch is a public nuisance if such city or town, acting through its governing body declares it to be such nuisance.

History: En. Sec. 2, Ch. 63, L. 1961; amd. Sec. 2, Ch. 306, L. 1969; R.C.M. 1947, 11-4002.

7-31-4204. Investigation and remedial measures related to open ditches. The governing body of the city or town is hereby given the power to:

(1) investigate the dangerous condition of such ditches within the corporate limits and declare any such ditch a public nuisance; and

(2) determine the measures necessary to remove the danger and public nuisance, including fencing or the use of culverts or other protective devices, based upon standards to be determined by such city or town.

History: En. Sec. 3, Ch. 63, L. 1961; amd. Sec. 3, Ch. 306, L. 1969; R.C.M. 1947, 11-4003.

7-31-4205. Procedure to close and fill ditch — notice. (1) When a public nuisance has been declared, as provided in this part, the city or town shall give public notice for at least 60 days to owners of the ditch and of any water rights affected that such ditch has been declared a public nuisance and that it shall be closed and filled unless the owners of such rights desire to keep the ditch open.

(2) Such notice shall include publication once each week for at least 8 successive weeks in an established newspaper published within the city or town if one exists or, in its absence, in the official county newspaper.

History: En. Sec. 4, Ch. 63, L. 1961; R.C.M. 1947, 11-4004.

7-31-4206. Procedure to maintain open ditch. (1) If a person claims that the water has not been abandoned and claims the right to use water in a ditch that the city or town has declared a public nuisance, he shall notify the city or town before the expiration of the 60-day period that he wishes to continue the use of such water within the city or town and that he, individually or with others, will provide such protective devices as ordered by the city or town.

(2) If such notice is given, the person or persons claiming such right or rights shall have a period not to exceed 6 months to remove the public nuisance in the manner ordered by the city or town.

(3) If the city or town approves the work, it shall permit the water to flow into the city or town. If the protective device is not provided or if it does not meet specifications required by the city or town, the city or town may designate such ditch abandoned and order it closed or filled when the 6-month period ends.

History: En. Sec. 5, Ch. 63, L. 1961; R.C.M. 1947, 11-4005.

7-31-4207. Exemption for commercial irrigation ditches — improvement districts for protection from open ditches. (1) This part does not apply to ditches carrying water used for commercial irrigation purposes.

(2) However, whenever the public interest or convenience may require, a city or town is hereby authorized and empowered to create a special improvement district for the purpose of building, constructing, acquiring by purchase, and maintaining devices intended to protect the safety of the public from open ditches carrying water. Such devices or improvements shall provide access to and shall not be constructed so as to hinder the operation and maintenance of the ditch. The owner or owners of open ditches carrying irrigation or other water shall not be included in any special improvement district under this part for the purpose of assessment to support the special improvement district for the installation, repair, or maintenance of any protective devices.

History: En. Sec. 6, Ch. 63, L. 1961; amd. Sec. 4, Ch. 306, L. 1969; R.C.M. 1947, 11-4006.

CHAPTER 32

LAW ENFORCEMENT

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Part 1

Department of Public Safety

7-32-101. Department of public safety authorized. In counties other than first- and second-class counties, on agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established a department of public safety in lieu of a police department and a sheriff's office.

History: En. Sec. 1, Ch. 347, L. 1973; amd. Sec. 1, Ch. 146, L. 1975; R.C.M. 1947, 16-2726(part).

7-32-102. Director of department of public safety. The director of the department of public safety shall be the sheriff, who may be elected or may be appointed by the public safety commission if the form of county government provides for an appointed sheriff. A director so appointed shall receive a majority of the votes of the public safety commission members voting on the question of his appointment.

History: **En. Sec. 2, Ch. 347, L. 1973; amd. Sec. 6, Ch. 146, L. 1975; R.C.M. 1947, 16-2727.**

7-32-103. Structure of department of public safety — duties. (1) The director shall have the powers and perform the duties conferred on and required of sheriffs, police officers, and chiefs of police, except in cases involving the discharge or termination of employment of subordinate employees.

(2) Officers and patrolmen of the city or town police department and deputies of the county sheriff's office shall be subordinate to the director and shall have the power and perform the duties conferred on and required of police officers and patrolmen in cities and towns and of sheriff's deputies in counties, as required by state law and municipal ordinance.

History: **En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(part).**

7-32-104. Salaries. The provisions of 7-4-2503 notwithstanding, the salaries of the director and employees of the department of public safety shall be established by the public safety commission and shall be paid by the city or town with the board of county commissioners. Said salaries in any event shall not be less than those specified in 7-4-2503.

History: **En. Sec. 4, Ch. 347, L. 1973; amd. Sec. 11, Ch. 146, L. 1975; R.C.M. 1947, 16-2729.**

7-32-105. Officers' status for purpose of enforcing and executing court orders. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees, and orders of court, and making sales thereunder and returns thereof, the director shall be known and designated as "sheriff of the city and county of ...." and each police officer, patrolman, and deputy sheriff shall be known and designated as "deputy sheriff".

History: **En. Sec. 5, Ch. 347, L. 1973; R.C.M. 1947, 16-2730.**

7-32-106. Meaning of terms employee and subordinate employee. "Employee" or "subordinate employee" means but is not limited to any officer or patrolman of the city or town police department, any deputy of the county sheriff's office, or any person employed as a clerk, dispatcher, or secretary by the department of public safety or so employed by the city or town police department or the county sheriff's office prior to the establishment of the department of safety.

History: **En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(1).**

7-32-107. Hearing required for discharge of subordinate employee. In all cases involving the discharge or the termination of employment of any subordinate employee by the director of the department of public safety, such employee is entitled to a full hearing as provided in this part, except that those employees covered under collective bargaining agreements as provided for in Title 39, chapter 31 shall be entitled to use any grievance procedure provided for within the collective bargaining agreement.

History: **En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(2).**

7-32-108. Hearing procedure for employee discharged by an appointed director. (1) A director appointed by the public safety commission shall at the time of the discharge or termination of the employment of any subordinate employee provide such employee a written statement, subscribed and sworn to by the director, setting forth the cause or causes for the discharge or termination of employment.

(2) Within 30 days from the date of discharge or termination of his employment, such employee may make application to the public safety commission for a hearing before the commission on the charges resulting in the employee's discharge or termination of employment. Such employee may be present at the hearing in person and may be represented by legal counsel. The commission shall keep a record of the proceedings in such cases, and the records shall be a matter of public record. For the purpose of keeping a record of the proceedings in such a case, the department of public safety shall provide the commission with a person qualified to keep a record of the proceedings. Such person may be an employee of the department.

(3) The commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination of employment have been proven.

(4) The commission shall have the power, in all cases wherein a majority of the commission members find the charges not proven, to reinstate any employee to the same position he held and at the same salary he received prior to discharge or termination of employment.

(5) In all cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision of the commission to the district court of the county wherein the employee was employed. Such appeal must be initiated within 60 days of the ruling of the commission.

History: **En. 16-2728.1 by Sec. 8, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.1.**

7-32-109. Hearing procedure for employee discharged by elected director. (1) A director who is elected shall at the time of the discharge or termination of employment of any subordinate employee be required to follow the procedures of notice required of an appointed director.

(2) Any employee discharged or terminated by an elected director is entitled to a hearing before the public safety commission in the manner provided in 7-32-108.

(3) The public safety commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination have been proven.

(4) The commission may request that the elected director reinstate an employee in all cases wherein a majority of the commission members find the charges not proven. The director may deny such a request for reinstatement but shall provide the commission with a written statement, subscribed and sworn to by the director, setting forth the reason or reasons for the refusal to reinstate the discharged or terminated employee. Such written statement shall become a part of the records of the proceedings of the commission and shall be open to public scrutiny.

(5) In all cases wherein the commission finds the charges not proven but the elected director refuses to reinstate the discharged or terminated employee or cases wherein a majority of the commission members find the

charges proven, the employee may appeal the decision in the manner provided in 7-32-108.

History: En. 16-2728.2 by Sec. 9, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.2.

7-32-110. Reinstatement of discharged employee who prevails in district court. In the event that an employee prevails in an appeal to the district court, he shall be entitled to be reinstated to the same position he held and at the same salary he received prior to his discharge or termination by the director.

History: En. 16-2728.3 by Sec. 10, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.3.

7-32-111 through 7-32-120 reserved.

7-32-121. Public safety commission. (1) The department of public safety shall be under the supervision of a public safety commission.

(2) The commission shall consist of three, five, or seven members. Each member of the commission shall serve a 4-year term and shall be appointed as provided in 7-32-121 through 7-32-124.

(3) No commission member may be an official of any unit of local government.

History: (1), (2)En. Sec. 1, Ch. 347, L. 1973; amd. Sec. 1, Ch. 146, L. 1975; Sec. 16-2726, R.C.M. 1947; (3)En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; Sec. 69-2726.1, R.C.M. 1947; R.C.M. 1947, 16-2726(part), 16-2726.1(5).

7-32-122. Appointment to three-member public safety commission. (1) Upon the creation of a three-member commission:

(a) one member shall be appointed by the legislative body of the city or town;

(b) one shall be appointed by the board of county commissioners; and

(c) one shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for appointment by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment.

(3) Initially, one commission member shall serve a 4-year term and two commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of his term.

History: En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(1).

7-32-123. Appointment to five-member public safety commission. (1) Upon the creation of a five-member commission:

(a) two members shall be appointed by the legislative body of the city or town;

(b) two shall be appointed by the board of county commissioners; and

(c) one shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a five-member commission by the joint meeting must receive a majority of the

votes of the members of the board of county commissioners and a majority of the votes of members of the legislative body of the city or town voting on the question of his appointment.

(3) Initially, two commission members shall each serve a 4-year term and three commission members shall each serve a 2-year term. Each commission member must draw a lot to determine the length of his term.

History: **En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(2).**

7-32-124. Appointment to seven-member public safety commission. (1) Upon the creation of a seven-member commission:

(a) three members shall be appointed by the legislative body of the city or town;

(b) three shall be appointed by the board of county commissioners; and

(c) one shall be appointed by the members of the board of county commissioners and the members of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a seven-member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment.

(3) Initially, three commission members shall each serve a 4-year term and four commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of his term.

History: **En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(3).**

7-32-125. Residency requirements for public safety commissioners. Each commission member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

History: **En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(4).**

7-32-126. Vacancies and succession. (1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the person he replaces. A person so appointed shall serve out the unexpired portion of the term of the person he replaces.

(2) The successor for a commission member whose term has expired shall be appointed in the same manner used to appoint the commission member he succeeds.

(3) A member of a public safety commission is eligible for reappointment to the commission at the end of his term.

History: **En. 69-2726.2 by Sec. 3, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.2(1) thru (3).**

7-32-127. Organization of public safety commission. (1) Not later than 60 days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners and the legislative body of the city or town.

(2) At the first meeting of the commission, the member jointly appointed by the board of county commissioners and the legislative body of the city or town shall be designated by the commission to serve as temporary chairman. As its first official act, the commission members shall select a chairman and vice-chairman from their own number.

(3) The chairman of the commission shall preside over all meetings and hearings of the commission. In the absence or inability of the chairman, the vice-chairman shall preside over all meetings and hearings of the commission.

History: En. 69-2726.3 by Sec. 4, Ch. 146, L. 1975; R.C.M. 1947, 69-2726.3(1) thru (3).

7-32-128. Meetings. Meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the commission members. Hearings in all cases involving employee discharge or termination shall be held upon request of any employee so discharged or terminated.

History: En. 69-2726.3 by Sec. 4, Ch. 146, L. 1975; R.C.M. 1947, 69-2726.3(4).

7-32-129. Compensation and expenses. Members of a public safety commission shall receive no compensation but may receive actual and necessary travel and other expenses incurred in the performance of official duties. Such costs shall be borne by the county if the commission member is appointed by the board of county commissioners, by the city or town by which appointed, or borne equally by the county and city or town if jointly appointed.

History: En. 69-2726.2 by Sec. 3, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.2(4).

Part 2

Reserve and Auxiliary Officers

7-32-201. Definitions. As used in this part, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

(2) "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(3) "Law enforcement agency" means a law enforcement service provided directly by a local government.

(4) "Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer as defined in 46-1-201(8) and has arrest authority as described in 46-6-401.

(5) "Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer as defined in 46-1-201(8) and has arrest authority as described in 46-6-401 only when authorized to perform these functions as a representative of the law enforcement agency.

History: En. 11-1851 by Sec. 1, Ch. 85, L. 1977; R.C.M. 1947, 11-1855(part).

7-32-202. Prohibition on participation in certain pension and retirement systems. (1) A reserve officer may not participate in any pension or retirement system established for full-time law enforcement officers.

(2) An auxiliary officer may not participate in any pension or retirement system established for full-time law enforcement officers.

History: (1)En. 11-1852 by Sec. 2, Ch. 85, L. 1977; Sec. 11-1856, R.C.M. 1947; (2)En. 11-1854 by Sec. 4, Ch. 85, L. 1977; Sec. 11-1858, R.C.M. 1947; R.C.M. 1947, 11-1856(9), 11-1858(3).

7-32-203. Provision of workers' compensation coverage. (1) Each law enforcement agency that utilizes reserve officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. Coverage shall be provided through the state compensation insurance fund, and the law enforcement agencies shall pay to the state fund an appropriate premium, as established by the state fund, to cover the insurance risk of providing coverage to the officers.

(2) Each law enforcement agency that utilizes auxiliary officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency.

History: (1)En. 11-1852 by Sec. 2, Ch. 85, L. 1977; Sec. 11-1856, R.C.M. 1947; (2)En. 11-1854 by Sec. 4, Ch. 85, L. 1977; Sec. 11-1858, R.C.M. 1947; R.C.M. 1947, 11-1856(10), 11-1858(4).

7-32-204 through 7-32-210 reserved.

7-32-211. Reserve officers authorized. A local government may authorize reserve officers. A person who meets minimum standards for appointment as a peace officer may be appointed as a reserve officer.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).

7-32-212. Prohibition on reduction of full-time officers. A local government may not reduce the authorized number of full-time law enforcement officers through the appointment or utilization of reserve officers.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(11).

7-32-213. Qualifications for appointment as reserve officer. To be appointed a reserve officer, a person must:

(1) have resided in the state continuously for at least 1 year prior to the appointment and in the county where such appointment is made for a period of at least 6 months prior to the date of the appointment;

(2) be a citizen of the United States;

(3) be at least 18 years of age;

(4) be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(5) not have been convicted of a crime for which he could have been imprisoned in a federal penitentiary or state prison;

(6) be of good moral character as determined by a thorough background investigation;

(7) be a graduate of an accredited high school or the equivalent;

(8) be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and

(9) possess a valid Montana driver's license.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).

7-32-214. Basic training program required. (1) No reserve officer may be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has satisfactorily completed a minimum 88-hour basic training program which must include but need not be limited to the following course content:

(a) introduction and orientation—1 hour;
(b) police ethics and professionalism—1 hour;
(c) criminal law—4 hours;
(d) laws of arrest—4 hours;
(e) criminal evidence—4 hours;
(f) administration of criminal law—2 hours;
(g) communications, reports, and records—2 hours;
(h) crime investigations—3 hours;
(i) interviews and interrogations—2 hours;
(j) patrol procedures—6 hours;
(k) crisis intervention—4 hours;
(l) police human and community relations—3 hours;
(m) juvenile procedures—2 hours;
(n) defensive tactics—4 hours;
(o) crowd control tactics—4 hours;
(p) firearms training—30 hours;
(q) first aid—10 hours; and
(r) examination—2 hours.

(2) The law enforcement agency is responsible for training its reserve officers in accordance with minimum training standards established by the Montana board of crime control.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(2),(3).**

7-32-215. Reserve manual required. The authorizing law enforcement agency establishing a law enforcement reserve force shall adopt and publish a manual setting forth the minimum qualifications, minimum training standards, and standard operating procedures for reserve officers.

History: **En. 11-1853 by Sec. 3, Ch. 85, L. 1977; R.C.M. 1947, 11-1857.**

7-32-216. Limitations on activities of reserve officers. (1) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government.

(2) A reserve officer may act only in a supplementary capacity to the law enforcement agency.

(3) Reserve officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).**

7-32-217. Restrictions on carrying weapons. No reserve officer may carry a weapon:

(1) while on assigned duty until the reserve officer has qualified on the firing range with a weapon in compliance with the firearms qualifying course conducted by the Montana law enforcement academy; and

(2) until authorized by the chief law enforcement administrator to carry a weapon.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(7).**

7-32-218. Status of reserve officer upon activation. A reserve officer is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state upon being activated by the chief law enforcement administrator of the local government and while on assigned duty only.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(8).**

7-32-219. Reserve force coordinator. The chief law enforcement administrator of a law enforcement agency with reserve officers shall appoint a full-time law enforcement officer of the agency as a reserve force coordinator. The reserve force coordinator shall coordinate the activities of the reserve force with those of the law enforcement agency.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).**

7-32-220. Appointment of reserve officer to full-time position. A reserve officer may be appointed as a full-time law enforcement officer through the procedures provided in Montana law for such appointments.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).**

7-32-221. Termination of reserve officers. Reserve officers serve at the pleasure of the chief law enforcement administrator and may be terminated at any time by the chief law enforcement administrator by written notification without any cause.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(12).**

7-32-222 through 7-32-230 reserved.

7-32-231. Auxiliary officers authorized. A local government may authorize auxiliary officers only on the orders and at the direction of the chief law enforcement administrator of the local government.

History: **En. 11-1854 by Sec. 4, Ch. 85, L. 1977; R.C.M. 1947, 11-1858(part).**

7-32-232. Role of auxiliary officers. (1) Auxiliary officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer.

(2) No auxiliary officer may carry a weapon while on assigned duty.

History: **En. 11-1854 by Sec. 4, Ch. 85, L. 1977; R.C.M. 1947, 11-1858(1)(a), (b), (2).**

7-32-233. Limitation on arrest authority of auxiliary officer. An auxiliary officer has only the arrest authority granted a private person in 46-6-502 and 46-6-503.

History: **En. 11-1851 by Sec. 1, Ch. 85, L. 1977; R.C.M. 1947, 11-1855(part).**

7-32-234. Exceptions. Provisions of 7-32-211, 7-32-213, and 7-32-214 do not apply to auxiliary officers, to sworn volunteer peace officers who are not assigned to general law enforcement duties, or to members of a posse organized to quell public disturbance or domestic violence in accordance with 7-32-2121(6).

History: **En. 11-1855 by Sec. 5, Ch. 85, L. 1977; R.C.M. 1947, 11-1859.**

Part 3

Qualifications of Law Enforcement Officers

7-32-301. Residency requirements. No sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance shall hereafter appoint as such special deputy, marshal, or policeman any person who shall not have resided continuously in this state for a period of at least 1 year and in the county where such appointment is made for a period of at least 6 months prior to the date of said appointment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

7-32-302. Waiver of residency requirements. The person or body authorized by law to appoint special deputies, marshals, or policemen may in its discretion waive residency requirements.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

7-32-303. Employment standards of board of crime control. No sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance shall hereafter appoint as such special deputy, marshal, or policeman any person who does not meet the minimum qualifying standards for employment promulgated by the board of crime control.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

7-32-304. Exception for organizing posse. The provisions of this part shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

Parts 4 through 20 reserved

Part 21

Sheriff's Department

7-32-2101. Vacancy in office of sheriff. When the sheriff is committed under an execution or commitment for not paying over money received by him by virtue of his office and remains committed for 60 days, his office is vacant.

History: En. Sec. 4394, Pol. C. 1895; re-en. Sec. 3023, Rev. C. 1907; re-en. Sec. 4787, R.C.M. 1921; Cal. Pol. C. Sec. 4186; re-en. Sec. 4787, R.C.M. 1935; R.C.M. 1947, 16-2715.

7-32-2102. Undersheriff to be appointed. The sheriff, as soon as may be after he enters upon the duties of his office, must, except in counties of the seventh and eighth classes, appoint some person undersheriff to hold during the pleasure of the sheriff. Such undersheriff has the same powers and duties as a deputy sheriff.

History: En. Sec. 851, 5th Div. Comp. Stat. 1887; amd. Sec. 4382, Pol. C. 1895; re-en. Sec. 3011, Rev. C. 1907; re-en. Sec. 4775, R.C.M. 1921; amd. Sec. 1, Ch. 24, L. 1933; re-en. Sec. 4775, R.C.M. 1935; R.C.M. 1947, 16-2703.

7-32-2103. Limitation on number of deputy sheriffs. The whole number of deputies allowed the sheriff is one undersheriff and, in addition, not to exceed the following number of deputies:

(1) six in counties of the first, second, or third class;

(2) two in counties of the fourth class;

(3) one in counties of the fifth, sixth, or seventh class.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 2, Ch. 263, L. 1979.

7-32-2104. Qualifications of deputy sheriff. (1) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) graduate of an accredited high school or the equivalent thereof;

(b) good moral character;

(c) never been convicted of a felony;

(d) has not within 5 years immediately preceding his date of employment been affiliated in any manner with a subversive organization;

(e) been examined by a physician licensed to practice in the state of Montana within 30 days immediately preceding his date of employment and has been pronounced in good physical condition.

(2) This section shall not be applicable to any deputy sheriff whose term of employment commenced prior to March 2, 1967.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(2).

7-32-2105. Probationary period for deputy sheriff. Any person whose term of employment as a deputy sheriff commences subsequent to March 2, 1967, shall serve a 1-year probationary period, and during this 1-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of 7-32-2104 through 7-32-2110.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(3).

7-32-2106. Attendance at Montana law enforcement academy required for deputy sheriffs. (1) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to March 2, 1967, to attend that academy provided for by Title 44, chapter 10, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending.

(2) Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(4).

7-32-2107. Tenure for deputy sheriffs — grounds for termination of employment. Any deputy sheriff now employed or who may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(1) conviction of a felony subsequent to the commencement of such employment;

(2) willful disobedience of an order or orders given by the sheriff;

(3) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

(4) sleeping while on duty;

(5) incapacity materially affecting ability to perform official duties;

(6) gross inefficiency in the performance of official duties.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(5).

7-32-2108. Written notice of termination of employment required. When a sheriff terminates the employment of a deputy, he shall at the time of termination cause to be served upon said deputy a statement in writing, subscribed and sworn to by the sheriff, setting forth the cause or causes for the discharge or termination of the deputy's employment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(6).

7-32-2109. Right to hearing on termination of deputy sheriff's employment. Any deputy sheriff whose employment is terminated may, within 30 days from the date of the termination of his employment, make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

7-32-2110. Reinstatement of deputy sheriff. In the event that a deputy prevails at the hearing provided for in 7-32-2109, he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

7-32-2111. Hours of work for deputy sheriff of county of first or second class. Any person employed as a deputy sheriff of a first- or second-class county shall not be forced to work in excess of 40 hours per week except in case of an emergency and shall be entitled to 2 days off in each 7-day period.

History: En 16-3705.1 by Sec. 1, Ch. 329, L. 1973; R.C.M. 1947, 16-3705.1

7-32-2112. Exception for organizing posse. The provisions of 7-32-301 through 7-32-303 shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

7-32-2113 through 7-32-2120 reserved.

7-32-2121. Duties of sheriff. The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;

(7) take charge of and keep the county jail and the prisoners therein;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the papers without delay; and

(11) perform such other duties as are required by law.

History: (1) thru (10)En. Sec. 4381, Pol. C. 1895; re-en. Sec. 3010, Rev. C. 1907; re-en. Sec. 4774, R.C.M. 1921; Cal. Pol. C. Sec. 4176; amd. Sec. 1, Ch. 157, L. 1925; re-en. Sec. 4774, R.C.M. 1935; amd. Sec. 10, Ch. 535, L. 1975; Sec. 16-2702, R.C.M. 1947; (11)En. Sec. 4401, Pol. C. 1895; re-en. Sec. 3030, Rev. C. 1907; re-en. Sec. 4794, R.C.M. 1921; Cal. Pol. C. Sec. 4193; re-en. Sec. 4794, R.C.M. 1935; Sec. 16-2722, R.C.M. 1947; R.C.M. 1947, 16-2702, 16-2722; amd. Sec. 3, Ch. 263, L. 1979.

7-32-2122. Duties of undersheriff. Whenever a vacancy occurs in the office of sheriff, the undersheriff must in all things execute the office of sheriff until a sheriff is elected or appointed and duly qualified.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907; re-en. Sec. 4776, R.C.M. 1921; re-en. Sec. 4776, R.C.M. 1935; R.C.M. 1947, 16-2704(part).

7-32-2123. Appointment of deputy sheriff to act as jailer. The sheriff may appoint two deputies in counties of the first, second, or third class and one deputy in counties of the fourth, fifth, sixth, or seventh class who shall act as jailer and receive the same salary as other deputy sheriffs.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 4, Ch. 263, L. 1979.

7-32-2124. Service of papers on sheriff. Service of a paper, other than a process, upon the sheriff may be made by delivering it to him or to one of his deputies or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

History: En. Sec. 4398, Pol. C. 1895; re-en. Sec. 3027, Rev. C. 1907; re-en. Sec. 4791, R.C.M. 1921; Cal. Pol. C. Sec. 4190; re-en. Sec. 4791, R.C.M. 1935; R.C.M. 1947, 16-2719.

7-32-2125. Operation of sheriff's vehicle. The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by him and may also pay for the operation and maintenance of those vehicles from county funds.

History: En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971; R.C.M. 1947, 16-2724(part).

7-32-2126. Liability insurance for privately owned vehicles when used on official business. (1) The board of county commissioners shall provide liability insurance for not more than one privately owned vehicle used by the sheriff, not more than one privately owned vehicle used by the undersheriff, and not more than one privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance shall be paid for from county funds and shall provide full comprehensive and collision coverage plus minimum coverage of $100,000 for each person for bodily injury and medical expenses, $300,000 for all persons per accident, and $50,000 per accident for property damage.

(2) This section shall not apply to counties furnishing motor vehicles to the sheriff's department pursuant to the provisions of 7-32-2125.

History: En. Sec. 2, Ch. 340, L. 1971; R.C.M. 1947, 16-2725.

7-32-2127. Prosecution of action involving county law enforcement personnel brought against executor or administrator. Any action for default or misconduct of any sheriff, his undersheriff, his jailer, or any of his deputies may be prosecuted against the executors or administrators of such sheriff.

History: En. Sec. 4384, Pol. C. 1895; re-en. Sec. 3013, Rev. C. 1907; re-en. Sec. 4777, R.C.M. 1921; re-en. Sec. 4777, R.C.M. 1935; R.C.M. 1947, 16-2705.

7-32-2128. False claims by sheriff. (1) Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, for furnishing food and supplies therefor, or for any service rendered in connection therewith or presents to said board false items in a claim or false vouchers or makes any profit whatever out of the board or keeping of prisoners in his custody and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board is guilty of a misdemeanor.

(2) Every sheriff who falsely represents to the board of county commissioners or attorney general his actual traveling expenses in the performance of any official duty or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty is guilty of a misdemeanor.

History: (1)En. Sec. 4628, Pol. C. 1895; re-en. Sec. 3161, Rev. C. 1907; re-en. Sec. 4910, R.C.M. 1921; re-en. Sec. 4910, R.C.M. 1935; amd. Sec. 19, Ch. 513, L. 1973; Sec. 25-229, R.C.M. 1947; (2)En. Sec. 4627, Pol. C. 1895; re-en. Sec. 3160, Rev. C. 1907; re-en. Sec. 4909, R.C.M. 1921; re-en. Sec. 4909, R.C.M. 1935; amd. Sec. 18, Ch. 513, L. 1973; amd. Sec. 99, Ch. 326, L. 1974; Sec. 25-225, R.C.M. 1947; R.C.M. 1947, 25-225, 25-229; amd. Sec. 1, Ch. 446, L. 1979.

7-32-2129. Misconduct of undersheriff. Any default, misfeasance, or malfeasance of such undersheriff acting as sheriff pursuant to 7-32-2122, as well as before, is a breach of the condition of the bond given by the sheriff who appointed him and also a breach of the condition of the bond given by him to the sheriff.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907; re-en. Sec. 4776, R.C.M. 1921; re-en. Sec. 4776, R.C.M. 1935; R.C.M. 1947, 16-2704(part).

7-32-2130. Liability for refusing to pay over money. If on demand the sheriff neglects or refuses to pay over to the person entitled thereto any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with 25% damages and interest at the rate of 10% per month from the time of demand, may be recovered by such person.

History: En. Sec. 4389, Pol. C. 1895; re-en. Sec. 3018, Rev. C. 1907; re-en. Sec. 4782, R.C.M. 1921; Cal. Pol. C. Sec. 4181; re-en. Sec. 4782, R.C.M. 1935; R.C.M. 1947, 16-2710.

7-32-2131. Liability in civil actions. (1) If the sheriff does not return a notice or process in his possession with the necessary endorsement thereon without delay, he is liable to the party aggrieved for $200 and for all damages sustained by him.

(2) If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, he is liable to the creditor for the value of such property.

(3) No direction or authority by a party or his attorney to a sheriff in respect to the execution of process or return thereof or any act or omission

relating thereto is available to discharge or excuse the sheriff from a liability for neglect or misconduct unless it is contained in a writing signed by the attorney of the party or by the party.

(4) "Process", as used in this part, includes all writs, warrants, summons, and orders of courts of justice or judicial officers. "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board, or officer or required by law to be served independently of such proceeding.

History: (1)En. Sec. 4387, Pol. C. 1895; re-en. Sec. 3016, Rev. C. 1907; re-en. Sec. 4780, R.C.M. 1921; Cal. Pol. C. Sec. 4179; re-en. Sec. 4780, R.C.M. 1935; Sec. 16-2708, R.C.M. 1947; (2)En. Sec. 4388, Pol. C. 1895; re-en. Sec. 3017, Rev. C. 1907; re-en. Sec. 4781, R.C.M. 1921; Cal. Pol. C. Sec. 4180; re-en. Sec. 4781, R.C.M. 1935; Sec. 16-2709, R.C.M. 1947; (3)En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; Sec. 16-2714, R.C.M. 1947; (4)En. Sec. 4380, Pol. C. 1895; re-en. Sec. 3009, Rev. C. 1907; re-en. Sec. 4773, R.C.M. 1921; Cal. Pol. C. Sec. 4175; re-en. Sec. 4773, R.C.M. 1935; Sec. 16-2701, R.C.M. 1947; R.C.M. 1947, 16-2701, 16-2708, 16-2709, 16-2714(part).

7-32-2132. Liability for escape in civil actions. (1) A sheriff who fails to prevent the escape or rescue of a person arrested in a civil action without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold for bail or upon a surrender in exoneration of bail before judgment, the sheriff is liable to the plaintiff for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, the sheriff is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the sheriff is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue, the sheriff may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a sheriff for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff.

History: En. Secs. 4390, 4391, 4392, Pol. C. 1895; re-en. Secs. 3019, 3020, 3021, Rev. C. 1907; re-en. Secs. 4783, 4784, 4785, R.C.M. 1921; Cal. Pol. C. Secs. 4182, 4183, 4184; re-en. Secs. 4783, 4784, 4785, R.C.M. 1935; R.C.M. 1947, 16-2711, 16-2712, 16-2713; amd. Sec. 5, Ch. 263, L. 1979.

7-32-2133 through 7-32-2140 reserved.

7-32-2141. Fees of the sheriff. The sheriff shall receive the following fees:

(1) for the service of summons and complaint on each defendant, $2;

(2) for levying and serving each writ of attachment of execution on real or personal property, $2;

(3) for service of attachment on the body or order of arrest on each defendant, $2;

(4) for the service of affidavit, order, and undertaking in claim and delivery, $2;

(5) for serving a subpoena, $1 for each witness summoned;

(6) for serving writ of possession or restitution, $4;

(7) for trial of the right of property or damages, including all services except mileage, $5;

(8) for taking bond or undertaking in any case authorized by law, $2;

(9) for serving every notice, rule, or order, $2 for each person served;

(10) for copy of any writ, process, or other paper when demanded or required by law, 25 cents for each page;

(11) for advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, $2.

History: **En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(1).**

7-32-2142. Fees of the sheriff for holding property. For the expense in taking and keeping possession of and preserving property under attachment, execution, or other process, the sheriff shall receive such sum as the court or judge may order, not to exceed the actual expense incurred. No keeper must receive to exceed $10 per day, and no keeper must be employed without an order of court or be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored or where there is no reasonable danger of loss.

History: **En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(2).**

7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail. He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and feeding such persons during such transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, only one mileage may be charged.

(2) No mileage may be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

(3) (a) No mileage may be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same accompanies the summons and the service thereof may be made at the time of the service of the summons, except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, only one mileage may be allowed or charged; and in the service of subpoenas, only one mileage may be charged when the persons named therein live in the same place or in the same direction; but mileage may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, only one mileage may be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case may be allowed for less than 1 mile actually traveled.

History: Ap. p. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 25-226, R.C.M. 1947; (2)En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971; Sec. 16-2724, R.C.M. 1947; Ap. p. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 640 C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; Sec. 93-3016, R.C.M. 1947; (3)(b)En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R.C.M. 1921; re-en. Sec. 4900, R.C.M. 1935; Sec. 25-216, R.C.M. 1947; R.C.M. 1947, 16-2724(part), 25-216(part), 25-226(part), 93-3016(part); amd. Sec. 6, Ch. 263, L. 1979.

7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons. (1) A sheriff delivering prisoners at the state prison or a juvenile correctional facility or mentally ill persons at the Warm Springs state hospital or other mental health facility receives actual expenses necessarily incurred in their transportation. The expenses include the expenses of the sheriff in going to and returning from the institution. The sheriff shall take vouchers for every item of expense. The amount of these expenses, as shown by the vouchers when presented by the sheriff, shall be audited and allowed by the attorney general or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in subsection (2). No other or further compensation may be received by sheriffs for such expenses.

(2) Unless otherwise provided, while in the discharge of his duties, both civil and criminal, the sheriff receives a mileage allowance as provided in 2-18-503. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and feeding persons ordered by the court as provided in 2-18-501 through 2-18-503. The county is not liable for and the board of county commissioners may not pay for any claim of the

sheriff or other officer for any other expenses incurred in travel or for subsistence in cases where mileage is allowed under this section, the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: Ap. p. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R.C.M. 1921; re-en. Sec. 4885, R.C.M. 1935; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957; amd. Sec. 85, Ch. 199, L. 1965; amd. Sec. 1, Ch. 455, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 7, Ch. 439, L. 1975; Sec. 16-2723, R.C.M. 1947; Ap. p. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 26-226, R.C.M. 1947; R.C.M. 1947, 16-2723, 26-226(part); amd. Sec. 7, Ch. 263, L. 1979; amd. Sec. 2, Ch. 446, L. 1979.

7-32-2145. Mileage and expenses of sheriff for return of fugitives. For trips made for the return of fugitives apprehended and arrested outside the county, the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in 7-32-2143.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(part).

Part 22

County Jails

7-32-2201. County jail required. (1) A jail shall be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the commissioners of two or more counties it is necessary or desirable to build, provide, or utilize a common jail, they may do so in any city or town located within one of the counties so concerned. Such common jail shall be built or provided and kept in good repair at the expense of the counties concerned on a basis as the commissioners of the counties shall agree.

(2) The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated. In the case of more than one county utilizing a common jail as provided in subsection (1), such jail shall be kept by the sheriffs of the counties utilizing the common jail on a basis as the sheriffs shall agree.

(3) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a jail to be erected, furnished, and maintained.

History: (1)En. 16-2802.1 by Sec. 1, Ch. 193, L. 1973; Sec. 16-2802.1, R.C.M. 1947; (2)En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R.C.M. 1921; Cal. Pen. C. Sec. 1597; re-en. Sec. 12468, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1973; Sec. 16-2803, R.C.M 1947; (3)En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; Sec. 16-1008A, R.C.M. 1947; R.C.M. 1947, 16-1008A(part), 16-2802.1, 16-2803(part).

7-32-2202. Use of jail in contiguous county. (1) When there is no jail in the county or when the jail becomes unfit or unsafe for the confinement of prisoners, the district judge may, by written appointment filed with the clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county (or any of them) and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk, must be served on the sheriff or keeper of the designated jail, who must receive into his jail all prisoners authorized to be confined therein pursuant to this section and who is responsible for the safekeeping of the persons so committed in the same manner and to the same extent as if he were sheriff of the county for whose use his jail is designated. With respect to the persons so committed, he is deemed the sheriff of the county from which they were removed.

(3) When a jail is erected in the county for the use of which the designation was made or its jail is rendered fit and safe for the confinement of prisoners, the district judge of that county must, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased and that it is revoked.

(4) The clerk must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail from which the removal was had.

History: En. Secs. 3028, 3029, 3030, 3031, Pen. C. 1895; re-en. Secs. 9765, 9766, 9767, 9768, Rev. C. 1907; re-en. Secs. 12474, 12475, 12476, 12477, R.C.M. 1921; Cal. Pen. C. Secs. 1603, 1604, 1605, 1606; re-en. Secs. 12474, 12475, 12476, 12477, R.C.M. 1935; R.C.M. 1947, 16-2810, 16-2811, 16-2812, 16-2813.

7-32-2203. Purpose of county jail. The common jails are used as follows:

(1) for the detention of persons committed in order to secure their attendance as witnesses in criminal cases;

(2) for the detention of persons charged with crime and committed for trial;

(3) for the confinement of persons committed for contempt or upon civil process or by other authority of law;

(4) for the confinement of persons sentenced to imprisonment therein upon conviction of a crime.

History: En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R.C.M. 1921; Cal. Pen. C. Sec. 1597; re-en. Sec. 12468, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1973; R.C.M. 1947, 16-2803(part).

7-32-2204. Maintenance of county jail. The county commissioners have the care of building, inspecting, and repairing the jail and:

(1) must, once every 3 months, inquire into its state, as respects the security thereof, and the treatment and condition of prisoners; and

(2) must take all necessary precautions against escape, sickness, or infection.

History: En. Sec. 3040, Pen. C. 1895; re-en. Sec. 9777, Rev. C. 1907; re-en. Sec. 12486, R.C.M. 1921; re-en. Sec. 12486, R.C.M. 1935; R.C.M. 1947, 16-2822.

7-32-2205. Confinement of prisoners. The sheriff must receive all persons committed to jail by competent authority and provide them with necessary food, clothing, and bedding, for which he shall submit claims for the actual expenses incurred to the board of county commissioners for their determination and, except as provided in 7-32-2207, to be paid out of the county treasury.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; R.C.M. 1947, 16-2818(part).

7-32-2206. Confinement of federal prisoners. (1) The sheriff must receive and keep in the county jail any prisoner committed thereto by process or order issued under the authority of the United States until he is discharged according to law, as if he had been committed under process issued under the authority of this state.

(2) Provision and agreement for the use of said jails and the support and subsistence of such federal prisoners shall first be made by the United States, through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined. Such agreement shall be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county the sum of $10 per day for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof.

(3) A sheriff to whose custody a prisoner is committed as provided in this section is answerable for his safekeeping in the courts of the United States, according to the laws thereof.

History: (1)En. Sec. 1, Ch. 120, L. 1923; re-en. Sec. 12472.1, R.C.M. 1935; Sec. 16-2807, R.C.M. 1947; (2)En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931; re-en. Sec. 12472.2, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1969; amd. Sec. 1, Ch. 420, L. 1971; Sec. 16-2808, R.C.M. 1947; (3)En. Sec. 3027, Pen. C. 1895; re-en. Sec. 9764, Rev. C. 1907; re-en. Sec. 12473, R.C.M. 1921; Cal. Pen. C. Sec. 1602; re-en. Sec. 12473, R.C.M. 1935; Sec. 16-2809, R.C.M. 1947; R.C.M. 1947, 16-2807, 16-2808, 16-2809; amd. Sec. 1, Ch. 671, L. 1979.

7-32-2207. Confinement of persons on civil process. (1) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party thereto, the sheriff is not bound to receive such person unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding or to detain such person any longer than these expenses are provided for.

(2) This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

History: En. Sec. 3037, Pen. C. 1895; re-en. Sec. 9774, Rev. C. 1907; re-en. Sec. 12483, R.C.M. 1921; Cal. Pen. C. Sec. 1612; re-en. Sec. 12483, R.C.M. 1935; R.C.M. 1947, 16-2819.

7-32-2208. Actual confinement of prisoners required. A prisoner committed to the county jail for trial, for examination, or upon conviction for a public offense must be actually confined in the jail until he is legally discharged. If he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

History: En. Sec. 3025, Pen. C. 1895; re-en. Sec. 9762, Rev. C. 1907; re-en. Sec. 12471, R.C.M. 1921; Cal. Pen. C. Sec. 1600; re-en. Sec. 12471, R.C.M. 1935; R.C.M. 1947, 16-2806.

7-32-2209. Expenses of persons committed to jail by highway patrol bureau. In the event a person is committed to jail by the highway patrol bureau, department of justice, the state of Montana shall, upon claim presented for the county by the clerk and recorder, pay into the county treasury of the county the sum of $10 per day for each and every prisoner held in the county jail upon order or commitment of the highway patrol bureau or any department or officer thereof. For the purposes of this section, a day shall be defined as a 24-hour period or portion thereof, beginning with the time of incarceration. Such claims upon the highway patrol bureau, department of justice, shall be paid to the various counties out of funds appropriated for that purpose.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; R.C.M. 1947, 16-2818(part); amd. Sec. 2, Ch. 671, L. 1979.

7-32-2210. Employment of temporary guards. When necessary the sheriff may, with the assent in writing of the district judge, employ a temporary guard for the protection of the county jail or for the safekeeping of prisoners, the expenses of which are a county charge.

History: En. Sec. 3035, Pen. C. 1895; re-en. Sec. 9772, Rev. C. 1907; re-en. Sec. 12481, R.C.M. 1921; Cal. Pen. C. Sec. 1610; re-en. Sec. 12481, R.C.M. 1935; R.C.M. 1947, 16-2817.

7-32-2211. Service of papers upon jailer for prisoner. A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For neglect to do so, he is liable to the prisoner for all damages occasioned thereby.

History: En. Sec. 3034, Pen. C. 1895; re-en. Sec. 9771, Rev. C. 1907; re-en. Sec. 12480, R.C.M. 1921; Cal. Pen. C. Sec. 1609; re-en. Sec. 12480, R.C.M. 1935; R.C.M. 1947, 16-2816.

7-32-2212. Sheriff to prepare list of prisoners. The sheriff of each county must, on the first Monday in January and every 3 months thereafter, return to the county commissioners a certified list of the names of all prisoners in his custody on the last day of the preceding month, with the time and cause of their confinement, the length of time for which they were committed, and the number received and discharged during the preceding 3 months. In case he fails to do so, the sheriff must not receive any compensation for the sustenance of the prisoners in his custody.

History: En. Sec. 3041, Pen. C. 1895; re-en. Sec. 9778, Rev. C. 1907; re-en. Sec. 12487, R.C.M. 1921; re-en. Sec. 12487, R.C.M. 1935; R.C.M. 1947, 16-2823.

7-32-2213. Work hours for jailers in certain counties. Eight hours shall constitute a day's work for jailers in counties of the first, second, and third classes except in cases of emergency and when the peace and safety of the community require that such jailers work for a longer period than 8 hours in any 24.

History: En. Sec. 1, Ch. 93, L. 1909; re-en. Sec. 3070, R.C.M. 1921; re-en. Sec. 3070, R.C.M. 1935; R.C.M. 1947, 41-1106.

7-32-2214 through 7-32-2220 reserved.

7-32-2221. Segregation of prisoners. (1) Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

(a) persons committed on criminal process and detained for trial;

(b) persons already convicted of crime and held under sentence;

(c) persons detained as witnesses or held under civil process or under an order imposing punishment for a contempt.

(2) Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process must not be kept or put into the same room, nor shall male and female prisoners (except husband and wife) be kept or put into the same room.

History: En. Secs. 3023, 3024, Pen. C. 1895; re-en. Secs. 9760, 9761, Rev. C. 1907; re-en. Secs. 12469, 12470, R.C.M. 1921; Cal. Pen. C. Secs. 1598, 1599; re-en. Secs. 12469, 12470, R.C.M. 1935; R.C.M. 1947, 16-2804, 16-2805.

7-32-2222. Health and safety of prisoners. (1) When a county jail or building contiguous to it is on fire and there is reason to believe that the prisoners may be injured or endangered, the sheriff or jailer must remove them to a safe and convenient place and there confine them as long as it may be necessary to avoid the danger.

(2) When a pestilence or contagious disease breaks out in or near a jail and the physician thereof certifies that it is likely to endanger the health of the prisoners, the district judge may by a written appointment designate a safe and convenient place in the county or the jail in a contiguous county as the place of their confinement. The appointment must be filed in the office of the clerk and authorize the sheriff to remove the prisoners to the designated place or jail and there confine them until they can be safely returned to the jail from which they were taken.

(3) If in the opinion of the sheriff any prisoner, while detained, requires medication, medical services, or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.

History: (1)En. Sec. 3032, Pen. C. 1895; re-en. Sec. 9769, Rev. C. 1907; re-en. Sec. 12478, R.C.M. 1921; Cal. Pen. C. Sec. 1607; re-en. Sec. 12478, R.C.M. 1935; Sec. 16-2814, R.C.M. 1947; (2)En. Sec. 3033, Pen. C. 1895; re-en. Sec. 9770, Rev. C. 1907; re-en. Sec. 12479, R.C.M. 1921; Cal. Pen. C. Sec. 1608; re-en. Sec. 12479, R.C.M. 1935; Sec. 16-2815, R.C.M. 1947; (3)En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; Sec. 16-2818, R.C.M. 1947; R.C.M. 1947, 16-2814, 16-2815, 16-2818(part).

7-32-2223. Labor by prisoners. (1) Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding may be required by the board of county commissioners to perform labor on the public works or ways in the county.

(2) The board making such order may prescribe and enforce the rules under which such labor is to be performed.

History: En. Secs. 3038, 3039, Pen. C. 1895; re-en. Secs. 9775, 9776, Rev. C. 1907; re-en. Secs. 12484, 12485, R.C.M. 1921; Cal. Pen. C. Secs. 1613, 1614; re-en. Secs. 12484, 12485, R.C.M. 1935; R.C.M. 1947, 16-2820, 16-2821.

Part 23

Powers of County Commissioners Related to Law Enforcement

7-32-2301. Rewards for apprehension of criminals. (1) The board of county commissioners of each county has the power to offer rewards for the apprehension and conviction of any person or persons who have committed any felony within their respective counties. Said reward shall not exceed the sum of $500 for the apprehension and conviction of the party or parties guilty of a felony, and the reward shall not be paid in any case until a conviction has first been had in said case. All rewards shall be paid by warrants drawn on the general fund of the county.

(2) In no case shall the members of the board, sheriff, or other county officer receiving an annual or monthly salary be entitled to any part of any such reward.

History: En. Sec. 1, Ch. 61, L. 1909; re-en. Sec. 4483, R.C.M. 1921; re-en. Sec. 4483, R.C.M. 1935; R.C.M. 1947, 16-1123.

7-32-2302. Establishment of curfew. (1) The boards of county commissioners of the respective counties shall have:

(a) power to establish, by general order and from time to time, a curfew hour after which minors will not be allowed abroad on the public streets within the confines of unincorporated cities and towns of any such county; and

(b) authority to make all proper and necessary administrative rules for the purpose of carrying into effect the provisions of this section.

(2) The enforcement of the provisions of this section is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

(3) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $10.

History: (1)En. Sec. 1, Ch. 29, L. 1969; Sec. 16-1182, R.C.M. 1947; (2)En. Sec. 2, Ch. 29, L. 1969; Sec. 16-1183, R.C.M. 1947; (3)En. Sec. 3, Ch. 29, L. 1969; Sec. 16-1184, R.C.M. 1947; R.C.M. 16-1182, 16-1183, 16-1184.

Parts 24 through 40 reserved

Part 41

Municipal Police Force

7-32-4101. Police department authorized and required. There shall be in every city and town of this state a police department which shall be organized, managed, and controlled as provided in this part.

History: En. Sec. 1, Ch. 136, L. 1907; Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R.C.M. 1921; re-en. Sec. 5095, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1947; amd. Sec. 1, Ch. 72, L. 1949; R.C.M. 1947, 11-1801(part).

7-32-4102. Applicability of part. (1) This part shall in all respects be applicable to and shall govern and control police departments in every such city or town organized under any form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3 and amendments thereto.

(2) Where the provisions of this part do conflict with the provisions of said part 42 and the amendments thereto pertaining to the commission form of government, the provisions pertaining to the commission form of government shall prevail.

History: En. Sec. 1, Ch. 136, L. 1907; Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R.C.M. 1921; re-en. Sec. 5095, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1947; amd. Sec. 1, Ch. 72, L. 1949; R.C.M. 1947, 11-1801(part).

7-32-4103. Supervision of police department. In all cities and towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall have charge of and supervision over the police department thereof. He shall appoint all the members and officers thereof. Subject to the provisions of this part, he shall have the power to suspend or remove any member or officer of the force. He shall make rules, not inconsistent with the provisions of this part, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force.

History: En. Sec. 2, Ch. 136, L. 1907; Sec. 3305, Rev. C. 1907; re-en. Sec. 5096, R.C.M. 1921; re-en. Sec. 5096, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1947; R.C.M. 1947, 11-1802.

7-32-4104. Additional regulations by city council. In addition to the provisions herein contained, the city or town council may make any ordinances, not inconsistent with this part or any law of the state, for the government of the police department and for regulating the powers and duties of its officers and members.

History: En. Sec. 11, Ch. 136, L. 1907; Sec. 3314, Rev. C. 1907; re-en. Sec. 5105, R.C.M. 1921; re-en. Sec. 5105, R.C.M. 1935; R.C.M. 1947, 11-1813.

7-32-4105. Duties of chief of police. (1) It is the duty of the chief of police:

(a) to execute and return all process issued by the city judge or directed to him by any legal authority and to attend upon the city court regularly;

(b) to arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) to have charge and control of all policemen, subject to such rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council;

(d) to perform such other duties as the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of his duties, but he must not serve a process in any civil action or proceeding except when a city or town is a party.

History: En. Sec. 4785, Pol. C. 1895; re-en. Sec. 3254, Rev. C. 1907; re-en. Sec. 5037, R.C.M. 1921; re-en. Sec. 5037, R.C.M. 1935; R.C.M. 1947, 11-810.

7-32-4106. List of active and eligible policemen. (1) The city council shall have absolute and exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, to reduce the number of the police force at any time, and to divide the police membership into two lists:

(a) one an active list, who are to be actually employed and receive pay while so employed; and

(b) one an eligible list, who shall not receive pay while not actually employed as an officer or member.

(2) Officers or members of the active list temporarily relieved from duty shall become members of the eligible list without pay and shall be first entitled to reinstatement on the active list in case of vacancy, according to their seniority in the service, and all others on the eligible list shall be entitled to fill a vacancy in the order of their appointment.

(3) Such action of the council shall not be subject to review by any court.

(4) In no event shall there be any officers or members placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list shall equal in number 20% of the active list.

History: En. Sec. 7, Ch. 136, L. 1907; Sec. 3310, Rev. C. 1907; re-en. Sec. 5101, R.C.M. 1921; amd. Sec. 5, Ch. 119, L. 1923; re-en. Sec. 5101, R.C.M. 1935; R.C.M. 1947, 11-1807.

7-32-4107. Utilization of retired officers. Policemen or officers on the retired list of any city or town of this state shall retire from the active list of police officers of such city or town but shall be subject to call for police service or active duty whenever an emergency shall require or the active list be temporarily insufficient for proper policing of such city or town, all under the rules as the board of police commissioners or city council shall prescribe.

History: En. Sec. 3, Ch. 100, L. 1927; amd. Sec. 3, Ch. 120, L. 1929; re-en. Sec. 5108.3, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; amd. Sec. 6, Ch. 85, L. 1977; R.C.M. 1947, 11-1819.

7-32-4108. Appointment to police force. All appointments to the police force must be appointed by the mayor, or the manager in those cities operating under the commission-manager plan, and confirmed by the city council or commission. No such appointment must be made until:

(1) an application for such position on the police force has been filed with the mayor, or the manager in those cities operating under the commission-manager plan, and referred by him to the police commission, where such commission exists; and

(2) such applicant has successfully passed the examination required to be held by such police commission and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor, or the manager in those cities operating under the commission-manager plan.

History: En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R.C.M. 1921; amd. Sec. 2, Ch. 119, L. 1923; re-en. Sec. 5097, R.C.M. 1935; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973; R.C.M. 1947, 11-1803(part).

7-32-4109. Temporary employment for persons doing police work. The mayor of any city shall have the power and authority, at any time when he deems it expedient, to employ not to exceed two persons at one time for a period not to exceed 30 days to do police duty who are not members of the police department.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4110. Procedure for reinstatement on police force. (1) An applicant for a position on the police force who has already served 20 years or more in the aggregate on the police force of the city or town to which he is applying for reinstatement may make application within 1 year from the date on which his name was removed from the active list of police officers to the police commission of that city or town wherein he last served, and his application must be considered by said police commission within 30 days after receipt of said application.

(2) Said commission shall not require the applicant to have a physical examination or other examination required of applicants for a position on the police force; and in the event that the police commission recommends the reinstatement of said applicant as a member of the police force, the probationary term required of applicants for positions shall be dispensed with as to such applicant for reinstatement. It shall be the duty of the mayor to submit to the city council of said city at its next regular meeting the recommendation of the police commission; and in the event that a majority of the city council vote in favor of adopting the recommendation of the commission, said applicant shall be immediately reinstated as a police officer in said city or town.

History: En. Sec. 1, Ch. 205, L. 1939; R.C.M. 1947, 11-1808.

7-32-4111. Examination of applicants for position on police force. (1) All applicants for positions on the police force whose applications shall have been referred to the police commission shall be required to successfully undergo an examination before the police commission and to receive a certificate from said commission that the applicant is qualified for such appointment for the probationary period upon the police force.

(2) Any applicant who shall make any false statement to the police commission as to his age or other required qualifications at his examination before the police commission shall be subject to suspension or dismissal from the police force after trial.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947, 11-1805(part).

7-32-4112. Qualifications of policemen. (1) The members of the police department on the active list of any city at the time of their appointment under this part may not be less than 18 years of age or more than 35 years of age, but this restriction does not apply to any member of any police department as of July 2, 1973, to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service is not less than 3 months, or to applicants for reinstatement under 7-32-4110.

(2) A police officer must be a citizen of the United States and meet the minimum qualifying standards for employment promulgated by the board of crime control.

History: (1)(a), (2)En. Sec. 12, Ch. 136, L. 1907; Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R.C.M. 1921; amd. Sec. 6, Ch. 119, L. 1923; re-en. Sec. 5106, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1959; amd. Sec. 1, Ch. 47, L. 1971; amd. Sec. 1, Ch. 66, L. 1971; amd. Sec. 1, Ch. 56, L. 1973; amd. Sec. 1, Ch. 60, L. 1973; amd. Sec. 12, Ch. 335, L. 1974; Sec. 11-1814, R.C.M. 1947; (1)(b)En. Sec. 1, Ch. 100, L. 1927; amd. Sec. 1, Ch. 16, 1929; amd. Sec. 1, Ch. 120, L. 1929; re-en. Sec. 5108.1, R.C.M.

1935; amd. Sec. 1, Ch. 93, L. 1947; amd. Sec. 12, Ch. 94, L. 1973; Sec. 11-1817, R.C.M. 1947; R.C.M. 1947, 11-1814, 11-1817; amd. Sec. 8, Ch. 263, L. 1979.

7-32-4113. Probationary period and confirmation of appointment. (1) Every applicant who has passed the examination and received the certificate referred to in 7-32-4108 must first serve for a probationary term of not more than 1 year. At any time before the end of such probationary term, the mayor, or the manager in those cities operating under the commission-manager plan, may revoke such appointment.

(2) After the end of such probationary period and within 30 days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force and shall hold such position during good behavior unless suspended or discharged as provided by law.

History: En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R.C.M. 1921; amd. Sec. 2, Ch. 119, L. 1923; re-en. Sec. 5097, R.C.M. 1935; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973; R.C.M. 1947, 11-1803(part).

7-32-4114. Restrictions on activities of policemen. (1) No member of the police force shall hold any other office or be employed in any other department of the city or town government.

(2) No officer or member of the police department shall be a member of or delegate to any political convention, nor shall he be present at such convention except in the performance of duty relating to his position as such officer or member.

(3) It shall be unlawful for any officer or member of the police department to solicit any person to vote at any political caucus, primary, or election for any candidate or to challenge any voter or in any manner to attempt to influence any voter at any political caucus, primary, or election or be a member of any political committee.

History: (1)En. Sec. 8, Ch. 136, L. 1907; Sec. 3311, Rev. C. 1907; re-en. Sec. 5102, R.C.M. 1921; re-en. Sec. 5102, R.C.M. 1935; Sec. 11-1810, R.C.M. 1947; (2)En. Sec. 9, Ch. 136, L. 1907; Sec. 3312, Rev. C. 1907; re-en. Sec. 5103, R.C.M. 1921; re-en. Sec. 5103, R.C.M. 1935; Sec. 11-1811, R.C.M. 1947; (3)En. Sec. 10, Ch. 136, L. 1907; Sec. 3313, Rev. C. 1907; re-en. Sec. 5104, R.C.M. 1921, re-en. Sec. 5104, R.C.M. 1935; Sec. 11-1812, R.C.M. 1947; R.C.M. 1947, 11-1810(part), 11-1811, 11-1812.

7-32-4115. Exemptions of members of police force. No member of the police force shall be liable to military or jury duty or to arrest on civil process while actually on duty.

History: En. Sec. 8, Ch. 136, L. 1907; Sec. 3311, Rev. C. 1907; re-en. Sec. 5102, R.C.M. 1921; re-en. Sec. 5102, R.C.M. 1935; R.C.M. 1947, 11-1810(part).

7-32-4116. Minimum wage of police in first- and second-class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least $750 per month for the first year of service and thereafter at least $750 a month plus 1% of the minimum base monthly salary of $750 for each additional year of service up to and including the 20th year of additional service.

(2) This section applies to cities and towns not of the first class which have elected to come under the provisions of Chapter 120, Laws of 1929, as amended, or Chapter 335, Laws of 1974, as amended.

(3) Added salary for years of service will be based on the base monthly salary as established in this [act] and not on the actual current salary.

History: (1)En. Sec. 1, Ch. 55, L. 1935; re-en. Sec. 5108.16, R.C.M. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967; amd. Sec. 1, Ch. 298, L. 1969; amd. Sec. 1, Ch. 314, L. 1973; amd. Sec. 2, Ch. 438, L. 1975; Sec. 11-1832, R.C.M. 1947; (2)En. Sec. 2, Ch. 55, L. 1935; re-en. Sec. 5108.17, R.C.M. 1935; Sec. 11-1833, R.C.M. 1947; (3)En. Sec. 2, Ch. 266, L. 1967; Sec. 11-1832.1, R.C.M. 1947; R.C.M. 1947, 11-1832, 11-1832.1, 11-1833; amd. Sec. 9, Ch. 263, L. 1979.

7-32-4117. Group insurance for policemen — funding. (1) Cities of all classes, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective policemen;

(b) notwithstanding Title 2, chapter 18, part 7, pay the full premium of each policeman's insurance coverage for the policeman and his dependents.

(2) In compliance with 1-2-112, the administration of this section is declared a public purpose of a city, which may be paid out of the general fund of the governing body and financed by a levy not to exceed 2 mills on the taxable value of property within the city or town.

History: En. 11-1024.3, 11-1024.4 by Secs. 1, 2, Ch. 308, L. 1975; R.C.M. 1947, 11-1024.3, 11-1024.4.

7-32-4118. Days off duty without loss of compensation. Each member of the police force in every city of the first and second class shall be given 2 days off duty in each 7-day period without loss of compensation.

History: En. Sec. 1, Ch. 53, L. 1931; re-en. Sec. 5108.15, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1957; R.C.M. 1947, 11-1831.

7-32-4119. Overtime compensation. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to compensation for overtime as provided under 39-3-405.

History: En. 11-1832.2 by Sec. 1, Ch. 333, L. 1973; R.C.M. 1947, 11-1832.2.

7-32-4120. Expenditure of state payments by municipality not having police retirement system — annual report. (1) Any city or town not governed by the provisions of the police retirement system law shall only expend the payment received pursuant to 19-10-305 for police training or to purchase pensions for members of its police department.

(2) The city treasurer or town clerk of such cities or towns shall on or before April 1 of each year, report to the state auditor as to the expenditures of all funds received pursuant to 19-10-305.

History: En. Sec. 4, Ch. 261, L. 1965; R.C.M. 1947, 11-1837.

7-32-4121. Action to recover salary. (1) Actions to recover salaries by members of the police departments of cities must be commenced within 6 months after the cause of action shall have accrued.

(2) No action for unpaid salary can be maintained by members of the police department of cities except for service actually rendered and, if suspended or placed on the eligible list, then only for the days the member of the police department reports for duty.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, Ch. 11, Ex. L. 1919; re-en. Sec. 9036, R.C.M. 1921; re-en. Sec. 9036, R.C.M. 1935; Sec. 93-2610, R.C.M. 1947; (2)En. Sec. 2, Ch. 11, Ex. L. 1919; re-en. Sec. 9037, R.C.M. 1921; re-en. Sec. 9037, R.C.M. 1935; Sec. 93-2611, R.C.M. 1947; (3)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 93-2610, 93-2611, 93-2720.

7-32-4122 through 7-32-4130 reserved.

7-32-4131. Compensation and allowance for sick or injured policemen. Whenever any member of a police department in any city or town shall, on account of sickness or disability suffered or sustained while a member of such police department and not caused or brought on by dissipation or abuse, be confined to any hospital or his home and shall require medical attention and care, the officer of such police department may be allowed, by the city council, his salary as such police officer during his absence and an amount equal to his expenses while confined for such injury or sickness.

History: En. Sec. 6, Ch. 100, L. 1927; amd. Sec. 6, Ch. 120, L. 1929; re-en. Sec. 5108.6, R.C.M. 1935; R.C.M. 1947, 11-1822.

7-32-4132. Payment of partial salary amount of officer injured in performance of duty. A member of a municipal law enforcement agency of a first- or second-class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed the difference between his full salary and the amount he receives from workers' compensation until his disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever shall first occur.

History: En. 11-1822.1 by Sec. 1, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.1; amd. Sec. 1, Ch. 290, L. 1979.

7-32-4133. Repealed. Sec. 5, Ch. 290, L. 1979.

7-32-4134. Repealed. Sec. 5, Ch. 290, L. 1979.

7-32-4135. Discontinuation of salary when retirement allowance granted. Payment of a partial salary amount under 7-32-4132 shall be discontinued if the officer is disabled for an undetermined duration and is granted a disability retirement allowance under Title 19, chapters 9 and 10. If an application for such a retirement allowance is not made by the officer, application therefor may be made by the chief executive officer of the municipality by which such officer is employed.

History: En. 11-1822.4 by Sec. 4, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.4; amd. Sec. 2, Ch. 290, L. 1979.

7-32-4136. Assignment to light duty or another agency. (1) Whenever, in the opinion of the municipality, supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of his partial salary amount under 7-32-4132 shall be discontinued if he refuses to perform such light police duty when it is available and offered to him. Such light duty shall be consistent with the officer's status as a law enforcement officer.

(2) With his consent, the officer may be transferred to another department or agency within the municipality.

History: En. 11-1822.5 by Sec. 5, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.5; amd. Sec. 3, Ch. 290, L. 1979.

7-32-4137. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: En. 11-1822.6 by Sec. 6, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.6.

7-32-4138. Subrogation. The municipality has a cause of action for reimbursement of sums it has paid to an officer as salary and for medical treatment against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the municipality.

History: En. 11-1822.7 by Sec. 7, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.7.

7-32-4139 through 7-32-4150 reserved.

7-32-4151. Police commission required in all cities and some towns. (1) In all cities and some towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall nominate and, with the consent of the city council or commission, appoint three residents of such city or town who shall have the qualifications required by law to hold a municipal office therein and who shall constitute a board to be known by the name of "police commission".

(2) This section shall apply to organized police departments in every city and town of the state which have three or more full-time law enforcement officials, regardless of the form of government under which said city or town may be operating or may at any time adopt.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part).

7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one such member must be appointed annually at the first regular meeting of the city council or commission in May of each year. However, a member serving on the commission during the hearing or deciding of a case under 7-32-4155 shall continue to serve on the commission for that case until a decision has been made; a new member may not sit on the commission for such business.

(2) The compensation of the members of such board shall be fixed by the city council or commission, not to exceed $10 per day or more than $50 per month for any month for each member in cities of the first and second class.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part); amd. Sec. 1, Ch. 453, L. 1979.

7-32-4153. Meaning of word mayor. Wherever the word "mayor" is used in 7-32-4109 and 7-32-4155 through 7-32-4163, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(11).

7-32-4154. Role of police commission in examination of applicants for police force. It shall be the duty of the police commission to examine all applicants whose applications have been referred to the commission as to their age, legal, mental, moral, and physical qualifications and their ability to fill the office as a member of the police force. It shall also be the duty of the police commission, subject to the approval of the mayor, to make such rules regarding such examinations not inconsistent with this part or the laws of the state.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947, 11-1805(part).

7-32-4155. Role of police commission in hearing and deciding charges against policemen. (1) The police commission shall have the jurisdiction and it shall be its duty to hear, try, and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer:

(a) is incompetent or has become incapacitated, by age, disease, or otherwise, to discharge the duties of his office;

(b) has been guilty of neglect of duty, of misconduct in his office, or of conduct unbecoming a police officer;

(c) has been found guilty of any crime; or

(d) whose conduct has been such as to bring reproach upon the police force.

(2) It is the duty of the police commission, at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try, and determine the charge according to the rules of evidence applicable to courts of record in the state.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4156. Charges to be in writing. Any charge brought against any member of the police force must be in writing in the form required by the police commission, and a copy thereof must be served upon the accused officer or member at least 15 days before the time fixed for the hearing of such charge.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(2).

7-32-4157. Rights of accused policeman. The accused shall have the right to be present at the trial in person and by counsel and to be heard and to give and furnish evidence in his defense.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4158. Police commission trials open to public. All trials shall be open to the public.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4159. Subpoena authority of police commission. The chairman or acting chairman of the police commission shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person duly served with a subpoena is bound to attend in obedience thereto. The police commission shall have the same authority to enforce obedience to the subpoena and to punish the disobedience thereof as is possessed by a judge of the district court in like cases; provided, however, that punishment for disobedience is subject to review by the district court of the proper county.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(4).

7-32-4160. Decision by police commission — veto power of mayor. (1) The police commission must, after the conclusion of the hearing or trial, decide whether the charge was proven or not proven and shall have the power, by a decision of a majority of the commission, to discipline, suspend, remove, or discharge any officer who shall have been found guilty of the charge filed against him.

(2) Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing and giving reasons therefor, which shall become a permanent record of the police commission; provided, however, that where and when the police commission decides the charge not proven, the decision is final and conclusive and is not subject to modification or veto by the mayor or to any review.

(3) Where the police commission decides the charge proven, the mayor, within 5 days from the date of the filing of such findings and decision with the city clerk, may modify or veto such findings and decision.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(5), (6).

7-32-4161. Enforcement of decision. When a charge against a member of the police force is found proven by the board and is not vetoed by the mayor, the mayor must make an order enforcing the decision of the board or the decision as modified if modified by the mayor. Such decision or order shall be subject to review by the district court of the proper county on all questions of fact and all questions of law.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(7).

7-32-4162. Hearing required prior to dismissal of policeman. In no case shall any officer or member of the police force be discharged without a hearing or trial before the police commission as provided in 7-32-4155 in all cities of the first class, all cities of the second class, any and all cities having a duly and regularly appointed, qualified, and acting police commission, and all cities and municipalities functioning under the commission form, city manager plan, or a mayor.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(9).

7-32-4163. Temporary suspensions. The mayor, or chief of police, subject to the approval of the mayor, shall have the power in all cases to suspend a policeman or any officer for a period of not exceeding 10 days in any one month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4164. District court review. The district court of the proper county shall have jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force, but no suit to review such hearing or trial or for reinstatement to office shall be maintained unless the same is begun within a period of 60 days after the decision of the police commission or order of the mayor has been filed with the city clerk.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(8).

Part 42

Municipal Jails

7-32-4201. Municipal jails authorized. The city or town council has power to establish and maintain a jail for the confinement of persons convicted of violating the ordinances of the city or town, to make rules for the government of the same, and to cause the prisoners to work on streets or elsewhere within 3 miles of the city.

History: En. Subd. 35, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.34, R.C.M. 1935; R.C.M. 1947, 11-937.

7-32-4202. Municipal workhouse authorized. The city or town council has power to erect and organize a workhouse in or near a city or town. Any person who fails or neglects to pay any fine or costs imposed on him by any ordinance may be committed to the workhouse until such fine is paid.

History: En. Subd. 53, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.52, R.C.M. 1935; R.C.M. 1947, 11-955.

7-32-4203. Use of county jail. The city or town council has power to use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law and with the consent of the board of county commissioners.

History: En. Subd. 52, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.51, R.C.M. 1935; R.C.M. 1947, 11-954.

Part 43

Powers of Municipal Council Related to Law Enforcement

7-32-4301. Regulations governing arrest authorized. The city or town council has power to make regulations authorizing the police of the city or town to make arrests of persons charged with crime:

(1) within the limits of the city or town;
(2) within 5 miles thereof; and
(3) along the line of water supply of the city or town.

History: En. Subd. 58, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.57, R.C.M. 1935; R.C.M. 1947, 11-960.

7-32-4302. Control of disturbances of the peace. Within the city or town and within 3 miles of the limits thereof, the city or town council has power to prevent and punish intoxication (subject to the limits established in 53-24-106), fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace or which are offensive to public morals.

History: En. Subd. 25, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.24, R.C.M. 1935; amd. Sec. 16, Ch. 302, L. 1974; amd. Sec. 1, Ch. 403, L. 1975; R.C.M. 1947, 11-927.

7-32-4303. Control of shoplifting. The city or town council may define shoplifting as provided in 46-6-501 and punish persons found guilty thereof.

History: En. 11-990 by Sec. 5, Ch. 274, L. 1974; R.C.M. 1947, 11-990; amd. Sec. 10, Ch. 263, L. 1979.

7-32-4304. Control of vagrancy and disorderly conduct. The city or town council has power to define vagrancy and to restrain and punish vagrants, mendicants, and persons guilty of disorderly conduct.

History: En. Subd. 34, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.33, R.C.M. 1935; R.C.M. 1947, 11-936.

7-32-4305. Control of firearms. The city or town council has power to prevent and suppress the sale of firearms and carrying of concealed weapons.

History: En. Subd. 55, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.54, R.C.M. 1935; R.C.M. 1947, 11-957(part).

7-32-4306 through 7-32-4310 reserved.

7-32-4311. Maintenance of police telegraph. The city or town council has power to maintain a police telegraph.

History: En. Subd. 27, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.26, R.C.M. 1935; R.C.M. 1947, 11-929(part).

CHAPTER 33

FIRE PROTECTION

Parts 1 through 20 reserved

Part 21 — Rural Fire Districts

Section
7-33-2101. Rural fire districts authorized — petition.
7-33-2102. Notice of hearing.
7-33-2103. Hearing on petition — decision.
7-33-2104. Operation of fire district.
7-33-2105. Powers and duties of trustees.
7-33-2106. Details relating to board of trustees of fire district.
7-33-2107. Contracts for fire protection services.
7-33-2108. Mutual aid agreements.
7-33-2109. Tax levy authorized.
7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation.
Sections 7-33-2111 through 7-33-2120 reserved.
7-33-2121. Division of fire district authorized.
7-33-2122. Petition for division — hearing and notice.
7-33-2123. Decision on petition for division — protest.
7-33-2124. Distribution of assets and liabilities following division.
7-33-2125. Annexation of adjacent territory not contained in a fire district.
7-33-2126. Annexation of adjacent territory contained in a fire district.
7-33-2127. Withdrawal by owner of individual tract adjacent to municipality.
7-33-2128. Dissolution of fire district.

Part 22 — Rural Fire Protection

7-33-2201. Authority of county governing body to protect range, farm, and forest resources.
7-33-2202. Functions of county governing body.
7-33-2203. County rural fire chief.
7-33-2204. District fire chief to serve without compensation.
7-33-2205. Establishment of fire season — permit requirements.
7-33-2206. Violations.
7-33-2207. Voluntary urban fire crews for use in rural areas.
7-33-2208. Fire control powers — liability.
7-33-2209. Finance of fire control activities.
7-33-2210. State to be reimbursed for forest fire suppression activities in noncooperating counties.

Part 23 — Fire Protection in Unincorporated Places

7-33-2301. Fire wardens.
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7-33-2311. Fire companies authorized.
7-33-2312. Organization of fire company.
7-33-2313. Duties of chief.
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7-33-4110. Volunteer companies not affected.
7-33-4111. Tax levy for volunteer fire departments.
7-33-4112. Mutual aid agreements.
7-33-4113. Personnel of fire department not considered municipal officers.
7-33-4114. Limitation on liability for delays by persons authorized to receive and transmit fire reports.
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7-33-4121. Rules governing employment in fire departments.
7-33-4122. Term of appointment of firefighters — probationary period.
7-33-4123. Authority to suspend firefighters.
7-33-4124. Suspension procedure.
7-33-4125. Reduction and subsequent increase in number of firefighters based on seniority.
7-33-4126. Hours of work of members of paid fire departments in cities of first or second class.
7-33-4127. Compensation of fire department personnel.
7-33-4128. Minimum wages of firefighters in cities of first and second class.
7-33-4129. Exceptions to certain overtime provisions.
7-33-4130. Group insurance for firefighters — funding.
7-33-4131. Firefighter's rights in event of city-county consolidation.
7-33-4132. Violation and penalty.

Part 42 — Powers of Municipal Council Related to Fire Services

7-33-4201. Establishment of fire department and fire alarm system.
7-33-4202. Provision for fire equipment.
7-33-4203. Authority to restrict building to protect against fire.
7-33-4204. Inspection and regulation of fire hazards.
7-33-4205. Regulation of explosives and inflammable material.
7-33-4206. Regulation of bonfires, fireworks, and other fire-causing agents.
7-33-4207. Regulation of industries with fire-causing potential.
7-33-4208. Adoption of fire code.

Parts 1 through 20 reserved

Part 21

Rural Fire Districts

7-33-2101. Rural fire districts authorized — petition. The board of county commissioners is authorized to establish fire districts in any unincorporated territory or town upon presentation of a petition in writing signed by the owners of 50% or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last-completed assessment roll.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1,

Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2102. Notice of hearing. The board shall, within 10 days after the receipt of the petition, give notice of the hearing thereof at least 10 days prior to the hearing:

(1) by mailing a copy of the notice by first-class mail to each freeholder in the district at the address shown in the assessment roll;

(2) by causing notices of the time and place of such hearing to be posted in at least three of the most public places within the area proposed to be established as a fire district; and

(3) by publishing the notice at least once, not less than 10 or more than 20 days prior to the time of the hearing, in a newspaper regularly published in the county in which such proposed district is situated.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2103. Hearing on petition — decision. (1) The board shall proceed to hear the petition at the time set or at any time within 5 days thereafter to which the same is postponed or continued with due notice and may grant the same unless it is established thereat that the petition bears insufficient signatures as above required or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient.

(2) The board shall render its decision within 30 days after the hearing.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2104. Operation of fire districts. Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town, or village, said commissioners:

(1) may contract with a city, town, or private fire company to furnish fire protection for property within said district; or

(2) shall appoint five qualified trustees to govern and manage the affairs of the fire district.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part).

7-33-2105. Powers and duties of trustees. (1) The trustees shall prepare and adopt suitable bylaws.

(2) The trustees shall have the authority to provide adequate and standard firefighting apparatus, equipment, housing, and facilities for the protection of the district. They shall appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies.

(3) The trustees shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets shall, as far as applicable, apply to fire districts.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part).

7-33-2106. Details relating to board of trustees of fire district. (1) The five trustees initially appointed by the county commissioners shall hold office until their successors are elected and qualified as hereinafter provided.

(2) Trustees shall be elected as provided in 13-1-104(3). The term of office shall be 3 years beginning on the first Monday in January following their election or until their successors are elected and qualified. Appointments to fill vacancies shall be made by the county governing body and appointees shall hold office until the next regular election. Nominations for office shall be made as provided in 13-14-113. All electors, as defined in Title 13, who reside in the district are eligible to vote in the election.

(3) The trustees shall organize by choosing a chairman and appointing one member to act as secretary.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part); amd. Sec. 1, Ch. 213, L. 1979; amd. Sec. 390, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-33-2107. Contracts for fire protection services. (1) The trustees of such fire district, provided that the owners of 10% of the taxable value of the property in any such fire district may elect to make such a contract:

(a) may contract with the council of any city or town or with the trustees of any other fire district established in any unincorporated territory, town, or village which has any boundary line lying within 5 straight-line miles of any boundary line of such district, whether the city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by the city or town or by such other fire district to property included within such district; and

(b) may agree to pay a reasonable consideration therefor.

(2) Likewise, the trustees may contract to permit such fire district's equipment and facilities to be used by the cities, towns, or other fire districts which have any boundary lines lying within 5 straight-line miles of any boundary line of such district.

(3) Likewise, the trustees may enter into contracts with public or private parties under which such district fire company may extend fire protection to public or private property lying outside of such district or any other district or city limits but within 5 straight-line miles of any boundary line of such district, whether such public or private property shall lie within the same

county or another county. Such district fire company may use such fire district's equipment and facilities outside of such district in the performance of such contracts.

(4) All money received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

(5) The relationship between the fire district and the city, town, or private fire service shall be that of an independent contractor.

History: (1) thru (4)En. Sec. 1, Ch. 107; L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; Sec. 11-2010, R.C.M. 1947; (5)En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; Sec. 11-2008, R.C.M. 1947; R.C.M. 1947, 11-2008(part), 11-2010(c).

7-33-2108. Mutual aid agreements. (1) A mutual aid agreement is an agreement for protection against natural or manmade disasters.

(2) Fire district trustees may enter such agreements with the proper authority of:

(a) other fire districts;
(b) unincorporated municipalities;
(c) incorporated municipalities;
(d) state agencies which have fire-prevention services;
(e) private fire-prevention agencies;
(f) federal agencies.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(d).

7-33-2109. Tax levy authorized. At the time of the annual levy of taxes, the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of such city, town, or private fire service for the purpose of furnishing fire protection service to property within such district. Such tax must be collected as are other taxes.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan, or payments provided under 19-12-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

History: **En. Sec. 1, Ch. 193, L. 1979.**

Compiler's Comments

Preamble. The preamble to Chapter 193, L. 1979, reads as follows: "WHEREAS, confusion has arisen concerning the proper status of prior existing fire districts and fire companies following the formation of a city-county consolidated government with self-government powers; and

WHEREAS, the legislature wishes to clarify this situation with the clear understanding that the substance of the law is not changed; and

WHEREAS, Title 7, chapter 33, part 41, requires municipalities to provide fire services under that part; and

WHEREAS, and city-county consolidated government is neither a county government nor a municipality but under 7-3-1103 has the status of both; and

WHEREAS, this combined status allows the people of the local area to choose the most desirable means to provide local services, including fire services, within reasonable limits of interpreting applicable state law and so long as vested rights are not unreasonably abrogated; and

WHEREAS, the legislature finds that a local government charter that maintains rural fire services organizations as they were prior to consolidation is a reasonable interpretation of those laws; and

WHEREAS, to provide the desirable ratification of any existing charter interpretation to this effect and to clarify the application of such charters in the future.

THEREFORE, it is the purpose of this act to clarify the law on this point without establishing a presumption that the law is in any way substantively altered."

Effective date. Sec. 2, Ch. 193, L. 1979, provided: "This act is effective on its passage and approval." Approved March 21, 1979.

7-33-2111 through 7-33-2120 reserved.

7-33-2121. Division of fire district authorized. Fire districts may be divided as provided in 7-33-2122 through 7-33-2124.

History: **En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).**

7-33-2122. Petition for division — hearing and notice. (1) Whenever a petition in writing shall be made to the county commissioners, signed by the owners of 20% or more of the privately owned lands of an area proposed to be detracted from the original district who constitute 20% or more of the taxpayers who are freeholders within such proposed detracted area and whose names appear upon the last-completed assessment roll, the county commissioners shall, within 10 days from the receipt of such petition, give notice of the hearing of the petition by mailing a copy of the notice by first-class mail to each freeholder in the district at the address shown in the assessment roll and by causing a notice thereof to be posted, at least 10 days prior to the time appointed by them for the consideration of the petition, in at least three of the most public places within the proposed detracted area and also in at least three of the most public places within the remaining area.

(2) The petition for detraction shall describe the boundaries of the proposed detracted area and the boundaries of the remaining area.

(3) The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear the petition.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2123. Decision on petition for division — protest. The petition shall be granted and the original districts shall thereupon be divided into separate districts unless at the time of the hearing on such petition protests shall be presented by the owners of 50% or more of the area of the privately owned lands included within the entire original district who constitute a majority of the taxpayers who are freeholders of the entire original district and whose names appear upon the last-completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2124. Distribution of assets and liabilities following division. (1) Upon the division of districts, money on hand shall be apportioned between the divided areas according to their respective taxable valuations. All other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such other assets, and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations.

(2) Any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2125. Annexation of adjacent territory not contained in a fire district. (1) Adjacent territory that is not already a part of a fire district may be annexed in the following manner:

(a) A petition in writing by the owners of 50% or more of the area of privately owned lands of the adjacent area proposed to be annexed who constitute a majority of the taxpaying freeholders within such proposed area to be annexed and whose names appear upon the last completed assessment roll shall be presented to the board of county commissioners.

(b) The commissioners shall hold a hearing on such petition in accordance with the procedure outlined in 7-33-2122 and shall allow the annexation of such proposed adjacent territory unless protests are presented at the hearing by the owners of 50% or more of the area of the privately owned lands included within the original district who constitute a majority of the taxpaying freeholders within the original district.

(2) Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(4)(a).

7-33-2126. Annexation of adjacent territory contained in a fire district. (1) Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner:

(a) A petition in writing by the owners of 50% or more of the privately owned lands of an area which is part of any organized fire district who constitute a majority of the taxpaying freeholders within such area according to the last-completed assessment roll shall be presented to the county commissioners, asking that such area be transferred to and included in any other organized fire district to which said area is adjacent. The petition must set forth the change of boundaries to be affected by such proposed transfer of area.

(b) The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in 7-33-2122. The withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of 50% or more of the area of the privately owned lands included within either district affected who constitute a majority of the taxpaying freeholders of either district according to the last-completed assessment roll.

(2) The withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the firefighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(4)(b).

7-33-2127. Withdrawal by owner of individual tract adjacent to municipality. In lieu of the detraction procedure set forth in 7-33-2122 and 7-33-2123, whenever a person owns land adjacent to a city or town and wishes to have only that land annexed to the city or town, the land may be detracted as follows:

(1) The owner shall mail notice to the chairman of the trustees of the fire district or, if none, to the board of county commissioners of his intention to request annexation.

(2) The owner shall attach a copy of this notice of intention to his petition to the municipal governing body requesting annexation.

(3) Following adoption of the annexation order under 7-2-4714, the land is detracted from the fire district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en.

Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(5).

7-33-2128. Dissolution of fire district. Any fire district organized under this part may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of 50% or more of the area of the privately owned lands included within such fire district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last-completed assessment roll. The procedure and requirements outlined in 7-33-2101 through 7-33-2103 shall apply to such requests for dissolution of fire districts.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(2).

Part 22

Rural Fire Protection

7-33-2201. Authority of county governing body to protect range, farm, and forest resources. For the purpose of protection and conservation of range, farm, and forest resources and of the prevention of soil erosion, the county governing body may perform the functions provided in this part.

History: En. Sec. 1, Ch. 173, L. 1945; amd. Sec. 12, Ch. 397, L. 1977; R.C.M. 1947, 28-601.

7-33-2202. Functions of county governing body. The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties hereinafter imposed:

(1) The governing body shall provide for the organization of volunteer rural fire control crews.

(2) The governing body shall appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as they consider necessary.

(3) The county governing body shall, within the limitations of 7-33-2205 through 7-33-2209, protect the range, farm, and forest lands within the county from fire in cooperation with federal, state, and other fire protection agencies, including governing bodies of adjoining counties.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part).

7-33-2203. County rural fire chief. The county rural fire chief may be a regular county officer or other person who in the opinion of the board is the best qualified to perform the duties of this office and who is not entitled to additional compensation for the duties hereby imposed.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part).

7-33-2204. District fire chief to serve without compensation. All district fire chiefs shall serve without compensation.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part).

7-33-2205. Establishment of fire season — permit requirements. The county governing body may in its discretion establish fire seasons annually, during which no person may ignite or set any forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any forest, range, or croplands subject to the provisions of this part without having obtained an official written permit to ignite or set such fire from the recognized protection agency for that protection area.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(1).

7-33-2206. Violations. Any person who ignites or sets any forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within any forest, range, or cropland subject to the provisions of this part without first having obtained a written permit to ignite or set such fire is guilty of a misdemeanor.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(2).

7-33-2207. Voluntary urban fire crews for use in rural areas. To augment rural crews in case of serious emergency, the governing body may provide for the organization and training of voluntary urban fire crews to be used in rural areas.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(3).

7-33-2208. Fire control powers — liability. (1) Any county rural fire chief or district rural fire chief or his deputy may enter private property or direct the entry of fire control crews for the purpose of suppressing fires.

(2) A chief or deputy and the county or rural district are immune from suit for injury to persons or property resulting from actions taken to suppress fires under this section.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(4).

7-33-2209. Finance of fire control activities. (1) The county governing body is authorized to appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) If the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax at such rate as in their judgment will be necessary to raise such needed sum, not to exceed $15,000.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(5).

7-33-2210. State to be reimbursed for forest fire suppression activities in noncooperating counties. A county that has not entered into a cooperative or other written agreement with the state for forest protection shall reimburse the state for costs incurred by the state in connection with state fire suppression activities resulting from a forest fire emergency in that county.

History: En. 28-605 by Sec. 15, Ch. 397, L. 1977; R.C.M. 1947, 28-605.

Part 23

Fire Protection in Unincorporated Places

7-33-2301. Fire wardens. The board of county commissioners must, upon petition of 10 residents of any unincorporated city, town, or village in the county, appoint a fire warden for such city, town, or village, whose duty it is to examine all chimneys, stoves, stovepipes, ovens, furnaces, boilers, and appurtenances belonging thereto.

History: En. Sec. 1, p. 101, L. 1876; re-en. Sec. 639, 5th Div. Rev. Stat. 1879; re-en. Sec. 1139, 5th Div. Comp. Stat. 1887; re-en. Sec. 3230, Pol. C. 1895; re-en. Sec. 2074, Rev. C. 1907; re-en. Sec. 5141, R.C.M. 1921; re-en. Sec. 5141, R.C.M. 1935; R.C.M. 1947; 11-2001.

7-33-2302. Removal of fire dangers — penalty. (1) When any chimney, stove, stovepipe, oven, furnace, boiler, or appurtenance thereto is defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the fire warden, on complaint of any citizen, either orally or in writing, or upon his own examination or other satisfactory proof, must give written notice to the owner or occupant of the building or premises directing the owner or occupant to repair the same so as to make it secure against accident by fire.

(2) He may in the notice require the occupant or owner to replace any defective flue or stovepipe with a new and safe one. If the occupant or owner neglects for the space of 3 days to comply with the terms of said notice, he is guilty of a misdemeanor and punishable accordingly.

History: En. Sec. 2, p. 101, L. 1876; re-en. Sec. 640, 5th Div. Rev. Stat. 1879; re-en. Sec. 1140, 5th Div. Comp. Stat. 1887; re-en. Sec. 3231, Pol. C. 1895; re-en. Sec. 2075, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1921; re-en. Sec. 5142, R.C.M. 1921; re-en. Sec. 5142, R.C.M. 1935; R.C.M. 1947, 11-2002.

7-33-2303 through 7-33-2310 reserved.

7-33-2311. Fire companies authorized. (1) Fire companies in unincorporated towns and villages are organized by filing with the county clerk of the county in which they are located a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of organization, name, officers, and roll of active and honorary members. The certificate and filing must be renewed annually on or before September 1.

(2) There must not be allowed to any such towns or villages more than one company for each 1,000 inhabitants, but one company must be allowed in any city, town, or village where the population is less than 1,000.

(3) There must not be allowed to any fire company more than 28 certificate members.

History: En. Sec. 3232, Pol. C. 1895; re-en. Sec. 2076, Rev. C. 1907; re-en. Sec. 5143, R.C.M. 1921; Cal. Pol. C. Sec. 3335; re-en. Sec. 5143, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1977; R.C.M. 1947, 11-2003(part).

7-33-2312. Organization of fire company. (1) Every fire company organized pursuant to 7-33-2312 must choose or elect a foreman, who is the presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding $5 or expulsion for each offense.

(2) Every regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs. The seal is under the control of and for the use of the secretary and shall be affixed by him to exempt certificates, certificates of active membership, and such other documents as the bylaws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the bylaws provide for the faithful performance of his duties.

History: (1)En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2004, R.C.M. 1947; (2)En. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en. Sec. 5146, R.C.M. 1921; re-en. Sec. 5146, R.C.M. 1935; Sec. 11-2006, R.C.M. 1947; R.C.M. 1947, 11-2004(part), 11-2006(part); amd. Sec. 11, Ch. 263, L. 1979.

7-33-2313. Duties of chief. (1) The chief of every fire department must inquire into the cause of every fire occurring in the town in which he is chief and keep a record thereof. He must aid in the enforcement of all duly enacted fire ordinances, examine buildings in the process of erection, report violations of ordinances relating to prevention or extinguishment of fires and, when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be imposed upon him by proper authority. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires, with his badge of office conspicuously displayed. He must prevent injury to, take charge of, and preserve all property rescued from fires and return it to the owner on the payment of the expenses incurred in saving and keeping it. The amount of the expenses, when not agreed to, shall be fixed by a justice of the peace.

(2) He must devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of his department not less than 30 hours of instruction per year in matters pertaining to firefighting, and he must supervise the operation of such plan or program.

History: En. Sec. 3236, Pol. C. 1895; re-en. Sec. 2080, Rev. C. 1907; re-en. Sec. 5147, R.C.M. 1921; re-en. Sec. 5147, R.C.M. 1935; amd. Sec. 6, Ch. 118, L. 1965; amd. Sec. 18, Ch. 157, L. 1977; R.C.M. 1947, 11-2007.

7-33-2314. Certain exemptions for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to the following privileges and exemptions:

(1) exemption from payment of poll tax, road tax, and head tax of every description;

(2) exemption from jury duty;

(3) exemption from military duty except in case of war, invasion, or insurrection.

History: En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2004(part).

7-33-2315. Certificate of membership in fire company. (1) Every firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must receive from the chief engineer of the department to which he belonged a certificate to that effect.

(2) (a) Every active firefighter must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs. Such certificates must be countersigned by the secretary and over the seal of the company if one is provided.

(b) In lieu of issuing certificates to exempt firefighters by the chief of the fire department, on the certificate of the foreman and secretary of any fire company or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military and jury duty.

(3) Each certificate entitles the holder to exemption from military and jury duty. Every such certificate is prima facie evidence of the facts therein stated.

(4) The secretary of the fire department or fire company must keep a record of all certificates of exemption or active membership, the date thereof and to whom issued, and, when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates.

History: **Ap. p. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2004, R.C.M. 1947; Ap. p. Sec. 3234, Pol. C. 1895; re-en. Sec. 2078, Rev. C. 1907; re-en. Sec. 5145, R.C.M. 1921; re-en. Sec. 5145, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2005, R.C.M. 1947; Ap. p. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en. Sec. 5146, R.C.M. 1921; re-en. Sec. 5146, R.C.M. 1935; Sec. 11-2006, R.C.M. 1947; R.C.M. 1947, 11-2004(part), 11-2005, 11-2006(part).**

7-33-2316. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan, or payments provided under 19-12-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

History: **En. Sec. 1, Ch. 193, L. 1979.**

Compiler's Comments

Preamble. The preamble to Chapter 193, L. 1979, reads as follows: "WHEREAS, confusion has arisen concerning the proper status of prior existing fire districts and fire companies following the formation of a city-county consolidated government with self-government powers; and

WHEREAS, the legislature wishes to clarify this situation with the clear understanding that the substance of the law is not changed; and

WHEREAS, Title 7, chapter 33, part 41, requires municipalities to provide fire services under that part; and

WHEREAS, and city-county consolidated government is neither a county government nor a municipality but under 7-3-1103 has the status of both; and

WHEREAS, this combined status allows the people of the local area to choose the most desirable means to provide local services, including fire services, within reasonable limits of interpreting applicable state law and so long as vested rights are not unreasonably abrogated; and

WHEREAS, the legislature finds that a local government charter that maintains rural fire services organizations as they were prior to consolidation is a reasonable interpretation of those laws; and

WHEREAS, to provide the desirable ratification of any existing charter interpretation to this effect and to clarify the application of such charters in the future.

THEREFORE, it is the purpose of this act to clarify the law on this point without establishing a presumption that the law is in any way substantively altered."

Effective date. Sec. 2, Ch. 193, L. 1979, provided: "This act is effective on its passage and approval." Approved March 21, 1979.

Parts 24 through 40 reserved

Part 41

Municipal Fire Departments

7-33-4101. Fire department authorized and required. In every city and town of this state there shall be a fire department, which shall be organized, managed, and controlled as provided in this part.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(part).

7-33-4102. Applicability of part. (1) The provisions of this part govern and control fire departments in every city or town organized under whatever form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3.

(2) Whenever the provisions of this part conflict with the provisions of chapter 3, part 42, pertaining to the commission form of government, the provisions pertaining to the commission form of government prevail.

History: (1), (2)En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; Sec. 11-1901, R.C.M. 1947; (3)En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R.C.M. 1921; re-en. Sec. 5111, R.C.M. 1935; amd. Secs. 3 and 4, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1903, R.C.M. 1947; R.C.M. 1947, 11-1901(part), 11-1903(part); amd. Sec. 12, Ch. 263, L. 1979.

7-33-4103. Composition of fire department. Such fire department, when established, may consist of one chief of the fire department and as many assistant chiefs of the fire department and such number of firefighters as the council or commission may from time to time provide and may also include a city electrician and as many assistant electricians as the council or commission may from time to time provide.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

7-33-4104. Duties of chief and assistant chief of fire department. (1) The chief of the fire department shall have sole command and control over all persons connected with the fire department of the city or town and shall possess full power and authority over its organization, government, and discipline and to that end may from time to time establish such disciplinary rules as he may deem advisable, subject to the approval of the city or town council. He shall have charge of and be responsible for the engines and other apparatus and the property of the town or city furnished the fire department and see that they are at all times ready for use in the extinguishing of fires.

(2) The assistant chief of the fire department shall aid the chief in the work of the department and in his absence shall perform his duties.

History: En. Sec. 6, p. 75, L. 1899; re-en. Sec. 3331, Rev. C. 1907; re-en. Sec. 5114, R.C.M. 1921; re-en. Sec. 5114, R.C.M. 1935; R.C.M. 1947, 11-1906.

7-33-4105. Appointment of chief engineer of fire department. (1) The council of any city or town where there is no paid fire department may appoint a chief engineer of the fire department:

(a) to manage and control the fire engines and apparatus furnished by the city or town for the extinguishing and the prevention of fires;

(b) to superintend and direct all fire companies; and

(c) to examine and inspect all buildings, chimneys, flues, and boilers and other things within the city or town and require the same to be put in a safe condition or removed if liable to cause fire.

(2) In case a paid fire department is established in any city or town, the council may by ordinance provide for the maintenance of the same and the employment of the officers and employees thereof.

History: En. Sec. 4816, Pol. C. 1895; re-en. Sec. 3325, Rev. C. 1907; re-en. Sec. 5140, R.C.M. 1921, re-en. Sec. 5140, R.C.M. 1935; R.C.M. 1947, 11-1940.

7-33-4106. Appointment of firefighters. The mayor or manager shall nominate and, with the consent of the council or commission, appoint the chief of the fire department, the assistant chief or chiefs of the fire department, and all firefighters.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

7-33-4107. Qualifications of firefighters. The qualifications of firefighters shall be that they:

(1) shall not be over 31 years of age at the time of original appointment;

(2) shall have passed a physical examination by a practicing physician duly authorized to practice in this state; and

(3) at the option of said city or town, shall be qualified voters of the city or town.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R.C.M. 1921; re-en. Sec. 5113, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969; R.C.M. 1947, 11-1905(part).

7-33-4108. Physical examination. The examination required by 7-33-4107(2) shall be in writing and filed with the city or town clerk. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firefighters in the performance of their duty.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R.C.M. 1921; re-en. Sec. 5113, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969; R.C.M. 1947, 11-1905(part).

7-33-4109. Supplementary volunteer fire department authorized for cities of second class. (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.

(2) (a) The volunteer fire department shall be exempt from obligations in 7-33-4126 set out as applying to the paid department.

(b) Likewise, the city commission or governing department shall be exempted as to compliance with 7-33-4126 and 7-33-4128 insofar as the same may pertain to the said volunteer fire department by way of penalties and infringements.

(3) A volunteer is one who is an enrolled member of the volunteer fire department and assists the paid fire department; who is eligible to serve only on the board of trustees of the fire department relief association of such city (provided not more than three volunteer members are on said board of trustees); but who shall not be entitled to receive a service pension.

(4) The governing body of said city may at its discretion pay an enrolled volunteer firefighter the minimum of $1 for attending a fire and a minimum of $1 for each hour or fraction of an hour after the first hour in active service at said fire or returning any or all equipment to its proper place.

(5) In the attending of fires, any volunteer shall act and serve under the supervision of the chief of the paid fire department.

History: (1) thru (4)En. Sec. 3, Ch. 136, L. 1939; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1936, R.C.M. 1947; (5)En. Sec. 4, Ch. 136, L. 1939; Sec. 11-1937, R.C.M. 1947; R.C.M. 1947, 11-1936, 11-1937.

7-33-4110. Volunteer companies not affected. Nothing contained in 7-33-4101 through 7-33-4104, 7-33-4106 through 7-33-4108, 7-33-4112, 7-33-4113, 7-33-4122 through 7-33-4125, and 7-33-4127 shall be held or construed to affect any fire organization known as a volunteer fire company.

History: En. Sec. 10, p. 76, L. 1899; re-en. Sec. 3333, Rev. C. 1907; re-en. Sec. 5116, R.C.M. 1921; re-en. Sec. 5116, R.C.M. 1935; R.C.M. 1947, 11-1908(part).

7-33-4111. Tax levy for volunteer fire departments. For the purpose of supporting volunteer fire departments in any city or town which does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may levy, in addition to other levies permitted by law, a special tax not exceeding 2 mills on each dollar of the taxable value of the property of the city or town subject to taxation.

History: En. Sec. 1, Ch. 26, L.1927; re-en. Sec. 5116.1, R.C.M. 1935; amd. Sec. 26, Ch. 566, L. 1977; R.C.M. 1947, 11-1909.

7-33-4112. Mutual aid agreements. (1) A mutual aid agreement is an agreement for protection against natural or manmade disasters.

(2) Councils or commissions of incorporated municipalities may enter such agreements with the proper authority of:

(a) other incorporated municipalities;
(b) fire districts;
(c) unincorporated municipalities;
(d) state agencies which have fire protection services;
(e) private fire-prevention agencies;
(f) federal agencies.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec.

1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(b).

7-33-4113. Personnel of fire department not considered municipal officers. The chief of the fire department, the assistant chief or chiefs of the fire department, and the firefighters shall not be deemed officers of the municipal corporation in which such fire department is established.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

7-33-4114. Limitation on liability for delays by persons authorized to receive and transmit fire reports. No person, corporation, partnership, or association which is authorized by any city, town, village, or district fire department or by any volunteer fire company to receive any report of fire or which agrees to receive and transmit such report to such fire department or volunteer fire company shall be liable in any civil action for damage to property or persons, including death, caused by delay in reporting or failure to report such fire unless such delay or failure is the result of the gross negligence of such person, corporation, partnership, or association.

History: En. Sec. 1, Ch. 42, L. 1955; R.C.M. 1947, 11-1941.

7-33-4115 through 7-33-4120 reserved.

7-33-4121. Rules governing employment in fire departments. The city councils or commissioners of cities of the first and second class shall have power to establish and promulgate rules governing the employment of the members or employees of their respective fire departments.

History: En. Sec. 2, Ch. 91, L. 1917; re-en. Sec. 5139, R.C.M. 1921; re-en. Sec. 5139, R.C.M. 1935; R.C.M. 1947, 11-1939.

7-33-4122. Term of appointment of firefighters — probationary period. Each appointment shall be first made for a probationary term of 6 months, and thereafter the mayor or manager may nominate and, with the consent of the council or commission, appoint such chief and assistant chief or chiefs of the fire department and firefighters, who shall thereafter hold their respective appointments during good behavior and while they have the physical ability to perform their duties.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

7-33-4123. Authority to suspend firefighters. (1) The mayor or manager may suspend the chief and assistant or any firefighter of the fire department for neglect of duty or a violation of any of the rules of the fire department.

(2) The chief of the fire department may suspend the assistant chief of the fire department or any firefighter for like cause.

(3) The assistant chief of the fire department may suspend any firefighter for a like cause.

History: En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R.C.M. 1921; re-en. Sec. 5111, R.C.M. 1935; amd. Secs. 3 and 4, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1903(part).

7-33-4124. Suspension procedure. (1) In all cases of suspension the person suspended must be furnished with a copy of the charge against him, in writing, setting forth reasons for the suspension. Such charges must be presented to the next meeting of the council or commission and a hearing had thereon, when the suspended member of the fire department may appear in person or by counsel and make his defense to said charges.

(2) Should the charges not be presented to the next meeting of the council or commission after the suspension or should the charges be found not proven by the council or commission, the suspended person shall be reinstated and be entitled to his usual compensation for the time so suspended.

(3) If such charges are found proven by the council or commission, the council or commission, by a vote of a majority of the whole council or commission, may impose such penalty as it shall determine the offense warrants, either in the continuation of the suspension for a limited time or in the removal of the suspended person from the fire department.

History: En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R.C.M. 1921; re-en. Sec. 5111, R.C.M. 1935; amd. Secs. 3 and 4, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1903(part).

7-33-4125. Reduction and subsequent increase in number of firefighters based on seniority. (1) Should the council at any time reduce the number of firefighters in the fire department, those most recently appointed shall be selected for retirement from the fire department. The city or town clerk shall keep a list of such retired firefighters.

(2) Should the number of firefighters be again increased by the council, the men on said list shall be called into service, the longest service firefighters being first selected for service in the fire department.

History: En. Sec. 4, p. 74, L. 1899; re-en. Sec. 3329, Rev. C. 1907; re-en. Sec. 5112, R.C.M. 1921; re-en. Sec. 5112, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1904.

7-33-4126. Hours of work of members of paid fire departments in cities of first or second class. (1) The city council, city commission, or other governing body in cities of the first or second class shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than 8 hours of each consecutive 24 hours except in the event of a conflagration or other similar emergency when any of such members may be required to serve so long as the necessity therefor exists.

(2) Each member shall be entitled to at least 1 day off duty out of each 8-day period of service without loss of compensation.

History: Ap. p. Sec. 1, Ch. 15, L. 1937; Sec. 11-1931, R.C.M. 1947; Ap. p. Sec. 1, Ch. 136, L. 1939; Sec. 11-1934, R.C.M. 1947; R.C.M. 1947, 11-1931, 11-1934.

7-33-4127. Compensation of fire department personnel. The compensation of the chief of the fire department and assistant chiefs of the fire department and firefighters in cities and towns where the council or commission shall establish a paid fire department and the city electrician and assistant city electricians shall be fixed by ordinance.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

7-33-4128. Minimum wages of firefighters in cities of first and second class. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire departments of cities or towns of the first and second class of the state a minimum wage for a daily service of 8 consecutive hours of work of at least $750 per month for the first year of service and thereafter at least $750 per month plus 1% of said minimum base monthly salary for each additional year of service.

History: En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. 1967; amd. Sec. 1, Ch. 342, L. 1969; amd. Sec. 1, Ch. 460, L. 1973; amd. Sec. 1, Ch. 324, L. 1975; Sec. 11-1932, R.C.M. 1947; redes. 41-2303.1 by Sec. 1, Ch. 448, L. 1977; R.C.M. 1947, 41-2303.1(part).

7-33-4129. Exceptions to certain overtime provisions. The provisions of Title 39, chapter 3, part 4 relating to the payment of a rate of compensation of not less than 1 ½ times the hourly wage for employment in excess of 40 hours in a work week shall not apply to employment of appointed and confirmed members of a fire department of cities and towns unless such compensation is agreed upon in a collective bargaining agreement.

History: En. 41-2303.2 by Sec. 2, Ch. 448, L. 1977; R.C.M. 1947, 41-2303.2.

7-33-4130. Group insurance for firefighters — funding. (1) Cities of the first and second class, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective firefighters;

(b) pay the full premium of each firefighter's insurance coverage for the firefighter and his dependents notwithstanding the provisions of Title 2, chapter 18, part 7.

(2) Those incorporated cities and towns which require additional funds to finance the provisions of this section may levy on property, by the amount required to meet these provisions, a tax not to exceed 2 mills on the dollar upon all property in the respective city or town. This levy shall be collected in the same manner and at the same time as other taxes are levied.

History: En. 11-1024.1, 11-1024.2 by Secs. 1, 2, Ch. 39, L. 1975; R.C.M. 1947, 11-1024.1, 11-1024.2.

7-33-4131. Firefighter's rights in event of city-county consolidation. A firefighter employed by a fire department established as required by law in a city or town of the county prior to the election and qualification of a commission under part 11 or parts 12 and 13 of chapter 3 or other acts of consolidation or disincorporation has the same job tenure rights as though no election and qualification had taken place.

History: En. Sec. 83, Ch. 121, L. 1923; re-en. Sec. 5520.84, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1961; amd. Sec. 1, Ch. 34, L. 1975; amd. Sec. 31, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3524(1).

7-33-4132. Violation and penalty. Any person who shall violate any of the provisions of 7-33-4126 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $600, by imprisonment in the county jail for not less than 30 days or more than 7 months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 15, L. 1937; R.C.M. 1947, 11-1933.

Part 42

Powers of Municipal Council Related to Fire Services

7-33-4201. Establishment of fire department and fire alarm system. The city or town council has power to establish a fire department and prescribe and regulate its duties and to maintain a fire alarm.

History: En. Subd. 27, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.26, R.C.M. 1935; R.C.M. 1947, 11-929(part).

7-33-4202. Provision for fire equipment. The city or town council has power to erect engine, hose, and hook-and-ladder houses and to provide engines and other implements for the extinguishment of fire.

History: En. Subd. 28, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.27, R.C.M. 1935; R.C.M. 1947, 11-930.

7-33-4203. Authority to restrict building to protect against fire. For the purpose of guarding against fire, the city or town council has power to prescribe the limits within which wooden or combustible buildings must not be erected, placed, or repaired and to establish fire limits within the city or town.

History: En. Subd. 26, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.25, R.C.M. 1935; R.C.M. 1947, 11-928.

7-33-4204. Inspection and regulation of fire hazards. The city or town council has power to inspect chimneys, flues, fireplaces, stovepipes, ruins, structures, and boilers and, when dangerous, to require the same to be removed or put in order and prohibit the use thereof until safe.

History: En. Subd. 29, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.28, R.C.M. 1935; R.C.M. 1947, 11-931.

7-33-4205. Regulation of explosives and inflammable materials. The city or town council has power to regulate and prevent the storage or handling of gunpowder, giant powder, nitroglycerine, other inflammable explosives or materials, tar, pitch, kerosene, oils, and turpentine and to prohibit the storage of the same within 3 miles of the city limits.

History: En. Subd. 30, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.29, R.C.M. 1935; R.C.M. 1947, 11-932.

7-33-4206. Regulation of bonfires, fireworks, and other fire-causing agents. The city or town council has power to regulate or prohibit the building of bonfires or the explosion, use, or selling of fireworks, firecrackers, torpedoes, other pyrotechnics, or toy pistols or guns within the city or town.

History: En. Subd. 31, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.30, R.C.M. 1935; R.C.M. 1947, 11-933.

7-33-4207. Regulation of industries with fire-causing potential. The city or town council has power to regulate, restrain, or prevent the carrying on of manufactories dangerous in causing or producing fires.

History: En. Subd. 55, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.54, R.C.M. 1935; R.C.M. 1947, 11-957(part).

7-33-4208. Adoption of fire code. The governing body of an incorporated city or town may adopt technical fire codes, in whole or in part, by reference under the procedure provided in 7-5-4202.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(part).

CHAPTER 34

MEDICAL SERVICES AND BOARDING HOMES FOR THE AGED

Part 1 — Ambulance Services

Section

7-34-101. Ambulance services authorized.
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7-34-104. Certain ambulance services unaffected.

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7-34-2102. Definitions.
7-34-2103. Petition required to create hospital district.
7-34-2104. Details relating to petition.
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7-34-2161. Dissolution of hospital district.
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7-34-2202. Hospital commission.
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7-34-4101. Detention hospitals.

Part 1

Ambulance Services

7-34-101. Ambulance services authorized. A county, city, or town, acting through its governing body, may establish and maintain an ambulance service for such county, city, or town. Any county, city, or town may contract with any county, city, or town to establish and maintain a joint ambulance service and to share the costs, such costs to be apportioned according to the benefits to accrue, with the proportion to be paid by each to be fixed in advance by joint resolution by the respective governing bodies, if the governing body has received a petition signed by 15% of the electors registered to vote in the county, city, or town at the last preceding general election or in each of the counties, cities, or towns wherein a joint ambulance service is being established.

History: **En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967; R.C.M. 1947, 69-3601(part).**

7-34-102. Special mill levy permitted. In addition to all other levies authorized by law, each county, city, or town may levy an annual tax up to 1 mill on the dollar of the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service.

History: **En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967; R.C.M. 1947, 69-3601(part).**

7-34-103. Manner of providing ambulance service. If a county, city, or town establishes or maintains such ambulance service it may, acting through its governing board:

(1) operate the service itself or contract for such service;

(2) buy, rent, lease, or otherwise contract for vehicles, equipment, facilities, operators, or attendants;

(3) adopt rules and establish fees or charges for the furnishing of such ambulance service.

History: **En. Sec. 2, Ch. 238, L. 1961; R.C.M. 1947, 69-3602.**

7-34-104. Certain ambulance services unaffected. The provisions of this part shall in no way affect county, city, or town ambulance service in operation on March 14, 1961.

History: **En. Sec. 3, Ch. 238, L. 1961; R.C.M. 1947, 69-3603.**

Parts 2 through 20 reserved

Part 21

Hospital Districts

7-34-2101. Purpose of part. The purpose of this part is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services to residents of such districts and, as herein authorized, to others.

History: **En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969; R.C.M. 1947, 16-4301(part).**

7-34-2102. Definition. As used in this part, unless the context requires otherwise, "hospital facilities" means a hospital or a hospital-related facility, including out-patient facilities, public health centers, rehabilitation facilities, long-term care facilities, and infirmaries.

History: En. Sec. 1, Ch. 336, L. 1973; R.C.M. 1947, 16-4301.1.

7-34-2103. Petition required to create hospital district. Proceedings for creation of a hospital district shall be initiated by a petition signed by not less than 30% of the qualified electors of the proposed hospital district who are taxpayers upon property within the proposed hospital district and whose names appear on the last-completed assessment roll for state and county taxes.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).

7-34-2104. Details relating to petition. (1) The petition may consist of one sheet or several sheets, identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the post-office address and voting precinct of each petitioner.

(2) Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the complete petition the affidavit of some person who circulated or assisted in circulating the petition that he believes the signatures thereon are genuine and the signers knew the contents thereof before signing the same.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).

7-34-2105. Petition to be filed with county clerk — clerk's certificate. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, shall be filed with the county clerk and recorder, who shall, within 15 days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners and attach it to a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) the total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last-completed assessment roll for state and county taxes;

(2) which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition;

(3) whether such qualified signers constitute more or less than 30% of the registered electors of the proposed hospital district who are taxpayers upon property thereon and whose names appear on the last-completed assessment roll for state and county taxes.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).

7-34-2106. Presentation of petition to board of county commissioners — hearing required. (1) The county clerk and recorder shall present the petition and his certificate to the board of county commissioners at its first meeting held after he has attached his certificate.

(2) The board shall thereupon carefully examine the petition, and if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of such hospital district.

History: **En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).**

7-34-2107. Notice of hearing. (1) A notice of the hearing required by 7-34-2106 shall be published in a newspaper having general circulation in the territory within the boundaries of the proposed hospital district once each week for at least 2 weeks, the last publication to be at least 2 weeks before the hearing. If there is no newspaper having general circulation within the boundaries of the proposed hospital district, the notice of hearing shall be posted in at least three public places within the boundaries of the proposed district for 2 weeks before the hearing.

(2) The notice shall state the time, date, place, and purpose of the hearing, describe the boundaries of the proposed hospital district, and state that any person residing in or owning property within the proposed hospital district may appear in support of or in opposition to the petition at such hearing.

History: **En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).**

7-34-2108. Hearing on petition. At the time fixed for said hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts or hearing petitioners or objectors without additional published or posted notice, but no adjournment shall exceed 2 weeks in all from and after the date originally noticed and published for the hearing.

History: **En. Sec. 3, Ch. 155, L. 1953; amd. Sec. 3, Ch. 257, L. 1969; R.C.M. 1947, 16-4303.**

7-34-2109. Election on question of creating hospital district. The board of county commissioners, upon completion of the hearing provided for in 7-34-2106 through 7-34-2108, shall proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition.

History: **En. Sec. 4, Ch. 155, L. 1953; amd. Sec. 4, Ch. 257, L. 1969; R.C.M. 1947, 16-4304(part).**

7-34-2110. Resolution calling for election. (1) The board of county commissioners in its resolution of reference may make such changes in the boundaries of the proposed district as it considers advisable, without including any additional lands not described in the petition, and it shall call an election upon the question of the creation of the district.

(2) The board must designate in its resolution whether a special election shall be held or whether the matter shall be determined at the next general election. If a special election is ordered, the board must specify in its order the date for such election.

History: **En. Secs. 4, 5, Ch. 155, L. 1953; amd. Secs. 4, 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4304(part), 16-4305(part); amd. Sec. 345, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-34-2111. Territory of hospital district. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969; R.C.M. 1947, 16-4301(part).

7-34-2112. Conduct of election on question of creating district. (1) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(2) At the election, the ballots must contain the words "Hospital district — Yes" and "Hospital district — No".

History: En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4305(part); amd. Sec. 346, Ch. 571, L. 1979.

7-34-2113. Who may vote. Only qualified electors residing within the proposed hospital district may vote on the question of the creation of the hospital district.

History: En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4305(part); amd. Sec. 2, Ch. 213, L. 1979.

7-34-2114. Procedure upon favorable vote. (1) In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within 10 days after the election, certify such result by resolution and proceed with the organization of such district as specified in this part.

(2) After 20 days from the passage of such resolution, the validity of the creation of such hospital district and the regularity of all proceedings preliminary thereto shall not be questioned or asserted in any legal action.

History: En. Sec. 6, Ch. 155, L. 1953; amd. Sec. 6, Ch. 257, L. 1969; R.C.M. 1947, 16-4306.

7-34-2115. District to be governed by elected trustees. (1) Said hospital district shall be governed and managed by a board of three or five trustees, elected by the registered electors residing in the district. The number of trustees on the board and, if the number is set at five, the initial terms of two trustees shall be fixed by the bylaws of the district.

(2) The trustees must be elected from among the registered electors qualified to vote at general elections within said district.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2116. Election of first board of trustees. (1) The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, and shall qualify upon the organization of the district if created.

(2) The trustees may be nominated and have their names appear upon the ballots as provided in 13-14-113.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 347, Ch. 571, L. 1979.

7-34-2117. Procedure for the conduct of election for trustees. (1) All elections and nominations for election of trustees following the election of the first board of trustees shall be conducted at the time and in the manner provided by Title 13.

(2) If there is no nomination petition filed, it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 348, Ch. 571, L. 1979.

7-34-2118. Term of office. (1) The trustees elected for the first board shall serve for terms:

(a) commencing upon their being elected and qualified; and

(b) terminating 1, 2, and 3 years, respectively, from the first Monday in January following their election and until their respective successors shall be elected and qualified.

(2) Annually thereafter there may be elected a trustee to serve for a term of 3 years and until his successor shall be qualified. Such term of 3 years shall commence on the first Monday in January following the said trustee's election.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 391, Ch. 571, L. 1979.

7-34-2119. Organization of board of trustees. The trustees at their first meeting shall adopt bylaws for the government and management of the district and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2120. Compensation of trustees. The trustees shall serve without pay.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2121. Vacancies. A vacancy upon the board of trustees or in the office of clerk shall be filled by appointment by the remaining members, and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2122. Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

(1) employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits or by such fees as may be agreed upon;

(2) cause reports, plans, studies, and recommendations to be prepared;

(3) lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise and acquire real or personal property by gift;

(4) lease or construct, equip, and furnish necessary buildings and grounds and maintain the same;

(5) adopt, by resolution, rules for the operation and administration of any and all hospital facilities under its control and for the admission of persons thereto;

(6) impose by resolution and collect charges for all services and facilities provided and made available by it;

(7) levy taxes as hereinafter prescribed;

(8) borrow money and issue bonds as hereinafter prescribed;

(9) procure insurance against liability of the district or its officers and employees, or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(10) sell or lease any of its facilities or equipment as may be deemed expedient;

(11) cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part).

7-34-2123. Admission to district hospital facilities. Such a hospital district must admit persons to its facilities without regard to race, color, or sex. Such obligation shall not prevent the board of trustees of such hospital district from establishing reasonable minimum rates for hospital quarters, services, and supplies. Indigents needing such services, for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals on terms and rates prescribed or authorized by law.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part).

7-34-2124 through 7-34-2130 reserved.

7-34-2131. Hospital district bonds authorized. (1) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

(2) The amount of bonds issued for such purpose and outstanding at any time shall not exceed 5% of taxable property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

(3) Such bonds shall be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of second- or third-class school districts by Title 20, chapter 9, part 4.

(4) Nothing herein shall be construed to preclude the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part).

7-34-2132. Hospital district budget. The board of hospital trustees shall annually present their budget to the board of county commissioners at the regular budget meetings as prescribed by law and therewith certify the amount of money necessary and proper for the ensuing year.

History: En. Sec. 9, Ch. 155, L. 1953; amd. Sec. 9, Ch. 257, L. 1969; R.C.M. 1947, 16-4309(part).

7-34-2133. Levy of district taxes — limit on mill levy. (1) The board of county commissioners must, annually at the time of levying county taxes, fix and levy a tax (in mills) upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees under 7-34-2132.

(2) The tax so levied for all hospital district purposes other than payment of bonded indebtedness shall not in any year exceed 3 mills on each dollar of taxable valuation of property within said district.

History: En. Sec. 9, Ch. 155, L. 1953; amd. Sec. 9, Ch. 257, L. 1969; R.C.M. 1947, 16-4309(part).

7-34-2134. Special additional mill levy authorized. If the maximum levy of 3 mills on each dollar of taxable valuation of property within the hospital district is inadequate to raise the amount of money certified as necessary and proper by the board of hospital trustees as provided in 7-34-2132, the board of county commissioners may make an additional levy for 2 years upon the taxable property within said hospital district of 6 mills or less sufficient to raise the amount certified by the board of hospital trustees.

History: En. 16-4309.1 by Sec. 1, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(1); amd. Sec. 1, Ch. 554, L. 1979.

Compiler's Comments

Effective date. Sec. 3, Ch. 554, L. 1979, provided: "This act is effective upon passage and approval." Approved April 12, 1979.

7-34-2135. Election required to impose special additional mill levy. (1) Before each additional levy provided for in 7-34-2134 may be made, the question shall be submitted to a vote of the people at a primary election held in an even-numbered year in the following form:

"Shall there be an additional levy of (specify number) mills upon the taxable property of the (specify hospital district) for 2 years necessary to raise the sum of (specify the approximate amount to be raised by the additional tax levy) for the purpose of (specify purpose for which the additional levy is made)?

☐ FOR an additional levy to raise the sum of (state the approximate amount to be raised by the additional tax levy), and being (give number) mills.

☐ AGAINST an additional tax levy to raise the sum of (state approximate amount to be raised by the additional tax levy), and being (give number) mills."

(2) Notice of the election, clearly stating the amount and the purpose of the additional levy, must be given and the election held and conducted and

the returns made in all respects in the manner prescribed by law with regard to the submission of questions to the electors under the general election laws.

History: En. 16-4309.1, 16-4309.2 by Secs. 1, 2, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(2), 16-4309.2; amd. Sec. 2, Ch. 554, L. 1979.

7-34-2136. Approval required to impose special additional mill levy. (1) A majority of the votes cast shall be necessary to permit the additional levy provided for in 7-34-2134, which shall be collected in the same manner as other hospital district taxes.

(2) If the calculated percentage of qualified electors voting in the election is less than 30%, the additional levy shall be deemed to have been rejected.

History: En. 16-4309.1 by Sec. 1, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(3), (4).

7-34-2137. Collection of taxes and disposition of funds. (1) The procedures for the collection of the tax shall be in accordance with the existing laws of Montana.

(2) The funds collected under the tax levy shall be held by the county treasurer, who shall be, ex officio, the treasurer for the hospital district, and such treasurer shall keep a detailed account of all tax money paid into the fund, of all other money from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

History: En. Sec. 10, Ch. 155, L. 1953; amd. Sec. 2, Ch. 97, L. 1955; amd. Sec. 10, Ch. 257, L. 1969; R.C.M. 1947, 16-4310.

7-34-2138 through 7-34-2150 reserved.

7-34-2151. Annexation of land to hospital district. The boundaries of any such public hospital district may be altered and outlying districts may be annexed from territory contiguous thereto in the following manner.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2152. Petition to annex land. A petition signed by 10% or more of the freeholders within the territory proposed to be annexed or by a majority of such freeholders if there are less than 25 residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2153. Hearing on petition for annexation — notice. (1) At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published in two successive issues of a newspaper published in the county prior to the date fixed by said board for the hearing of said petition, which date shall be not less than 4 weeks after the filing of such petition.

(2) Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2154. Decision on annexation petition. Said board of county commissioners shall have the power, by order entered on its minutes:

(1) to grant said petition either in whole or in part;

(2) to alter the boundaries of said public hospital district; and

(3) to annex thereto all or such portion of said area or territory described in said petition as will be benefited thereby.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2155. Effect of annexation. The annexed territory shall become and be a part of such public hospital district on the date fixed in the order of annexation and shall be subject to the taxes authorized by this part, including taxes for any preexisting indebtedness, together with the preexisting area of said district; and such taxes shall be uniform for the whole area and territory in the district as enlarged.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2156. Withdrawal of land from hospital district. (1) Any portion of a public hospital district may be withdrawn therefrom, as provided in 7-34-2156 through 7-34-2160, upon receipt of a petition signed by 51% or more of the taxpayers residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district.

(2) No petition for withdrawal shall be entertained or acted upon by the board unless the same is filed before December 31 of the preceding year.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2157. Hearing on petition for withdrawal — notice. (1) The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition, which time shall not be more than 4 weeks after the receipt thereof.

(2) Any interested person may appear at said hearing and present objections to the withdrawal of said portion from said district.

(3) The board shall, at least 2 weeks prior to the time so fixed, publish a notice of such hearing in two successive issues of a newspaper published in the county.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2158. Decision on withdrawal petition — appeal. (1) The board shall consider the petition and all objections thereto, pass upon the merits thereof, and make its order in accordance therewith.

(2) Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2159. Effective date of withdrawal. Any withdrawal shall be effective as of January 1 following the issuance of the withdrawal order.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2160. Withdrawing property subject to existing indebtedness. All taxable property within the withdrawn area shall remain subject to taxation for any bonded indebtedness of the hospital district existing as of the effective date of the withdrawal to the same extent as it would have been subject if not withdrawn.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2161. Dissolution of hospital district. At any time after 5 years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least 51% of the owners of property lying within such district as shown by the last-completed assessment roll.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).

7-34-2162. Hearing on petition for dissolution — notice. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three separate public places within said district for at least 2 weeks prior to the hearing. The notice shall also be published for at least two successive issues in a newspaper published in the county prior to such hearing.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).

7-34-2163. Decision on dissolution petition. The commissioners shall enter upon their minutes an order dissolving such district if, upon the hearing provided for in 7-34-2162, the commissioners find:

(1) such petition to be sufficient;

(2) that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations; and

(3) that there is good reason for the dissolution of such district.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).

7-34-2164. Effect of dissolution. The order of dissolution shall be filed of record, and the dissolution shall be effective for all purposes 6 months after the date of filing said order of dissolution, provided that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with legal proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged, or irrevocably settled shall become the property of the county.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).

Part 22

County Hospital Services

7-34-2201. Erection and management of county hospital. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a hospital to be erected, furnished, and maintained.

(2) The board of county commissioners of any county of this state which now has or may hereafter acquire title to a site and building or buildings suitable for county hospital purposes shall have jurisdiction and power, under such limitations and restrictions as are prescribed by law, to furnish and equip such building or buildings for hospital purposes in accordance with and as provided by the provisions of this section.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-34-2202. Hospital commission. The board of county commissioners shall have the power to create a commission for the management of such hospitals, as provided in 7-8-2103.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-34-2203. Provision of care for indigent and nonindigent sick. A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been or which may hereafter be erected and furnished under the provisions of 7-34-2201 may also be used for the hospitalization of the nonindigent sick provided said nonindigent sick pay a reasonable fee for such hospitalization and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-34-2204. Lease of county property for hospital purposes. (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to lease county buildings, equipment, furniture, and fixtures for hospital purposes, with full power of lessor except as hereinafter limited, upon the terms and conditions as the board may decide upon. The rentals received under the lease or leases shall be paid into the general fund of the county.

(2) (a) No lease may be made for a longer period than 5 years except in a case of financing bonds in accordance with 7-34-2411 through 7-34-2418, in which case the lease may terminate at the maturity date of the bonds sold and in which case bond payments may be made from lease receipts.

(b) The board may not enter into a contract of lease without and until first having advertised in a newspaper published in the county at least once a week for 5 weeks that the buildings and equipment are for lease for hospital purposes.

History: **En. Subd. 30, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.29, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1977; R.C.M. 1947, 16-1032.**

Part 23

County Boarding and Nursing Homes for the Aged

7-34-2301. Construction and operation of county boarding or nursing home authorized. The board of county commissioners may erect, equip, maintain, and operate a boarding home or nursing home for the aged, subject to standards established by the department of health and environmental sciences.

History: **En. Sec. 1, Ch. 88, L. 1963; amd. Sec. 106, Ch. 349, L. 1974; R.C.M. 1947, 16-1037.**

7-34-2302. Nature of services provided. The county boarding home or nursing home shall provide care, nursing care, maintenance, board, and room for the indigent aged. If facilities permit, the county boarding home or nursing home may provide similar services to nonindigent aged and shall charge and accept such reasonable payment for such care as is determined by the board of county commissioners.

History: **En. Sec. 2, Ch. 88, L. 1963; R.C.M. 1947, 16-1038.**

7-34-2303. Lease of county property for boarding or nursing home. (1) The board of county commissioners may lease and demise county buildings, equipment, furniture, and fixtures for the purpose of operation of a boarding home or nursing home for aged persons with full power of lessor except as hereinafter limited, upon such terms and conditions as the board shall decide upon.

(2) The rentals received under such lease or leases shall be paid into the poor fund of the county.

(3) No such lease and demise shall be made for a longer period than 5 years.

(4) Such board shall not enter into a contract of lease without and until having advertised in a newspaper published in the county at least once a week for 5 weeks that the said buildings and equipment are for lease for the purpose of a boarding home or nursing home for aged persons.

History: **En. Sec. 1, Ch. 87, L. 1963; R.C.M. 1947, 16-1036.**

Part 24

Financing of County-Operated Hospitals and Nursing Homes

7-34-2401. Depletion allowance reserve fund authorized. The governing body of any county in Montana may establish a depletion allowance reserve fund for the replacement and acquisition of property and equipment for county-operated hospitals and nursing homes created under 7-8-2102, 7-34-2201, 7-34-2301, and 7-34-2502.

History: En. 16-1042 by Sec. 1, Ch. 365, L. 1975; R.C.M. 1947, 16-1042.

7-34-2402. Sources of money for depletion allowance reserve fund. Money for the depletion allowance reserve fund may be derived from:

(1) public and private grants;

(2) money collected by the hospital or nursing home for which the fund is created, from or for indigent patients, that are in excess of the expenses incurred for the care of such patients.

History: En. 16-1043 by Sec. 2, Ch. 365, L. 1975; R.C.M. 1947, 16-1043(part).

7-34-2403. Accumulation of reserve fund. The depletion allowance reserve fund may accumulate at the discretion of the governing body.

History: En. 16-1043 by Sec. 2, Ch. 365, L. 1975; R.C.M. 1947, 16-1043(2).

7-34-2404. Investment of reserve fund. The money held in the depletion allowance reserve fund may be invested as provided by law. All interest earned on the investments is credited to the depletion allowance reserve fund.

History: En. 16-1044 by Sec. 3, Ch. 365, L. 1975; R.C.M. 1947, 16-1044.

7-34-2405 through 7-34-2410 reserved.

7-34-2411. Hospital and nursing home bonds authorized. (1) Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county constructing a hospital or nursing home under 7-8-2102 or 7-34-2201 may borrow money and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the facility, including revenues derived from:

(a) fees and payments for hospital or nursing home services;

(b) taxes levied under 7-34-2417;

(c) grants or contributions from the federal government; or

(d) any other sources.

(2) For the security of any such bonds, the county may by resolution make and enter into any covenant, agreement, or indenture and exercise any additional powers authorized to be made, entered into, or exercised by a county. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in 7-34-2411 through 7-34-2418 prior to the payment of current costs of operation and maintenance of the facilities.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part).

7-34-2412. Applicability. The authority granted under 7-34-2411 through 7-34-2418 is available only to counties in which no hospital exists or in which the only existing hospital has been ordered closed or cannot be reasonably brought into compliance with the standards established by the department of health and environmental sciences under Title 50, chapter 5, parts 1, 2, and 3.

History: En. 16-1047 by Sec. 3, Ch. 511, L. 1975; amd. Sec. 2, Ch. 513, L. 1977; R.C.M. 1947, 16-1047.

7-34-2413. Limitations on bond authority. The bonds may be issued by resolution or resolutions of the county governing body without any limitation of amount except as follows:

(1) no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then-outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and

(2) the county shall be obligated to take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part).

7-34-2414. Election required on question of issuance of bonds. (1) No bonds may be issued by any county until the question of approval of the issuance of such bonds has been submitted to the registered electors of the county at a general election or a special election called for that purpose by the governing body of the county and the majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by [7-7-2229 through 7-7-2231, 7-7-2233, and 7-7-2234].

(2) If a majority of the electors voting thereon vote against the issuance of the bonds, the county shall have no authority to issue the bonds under 7-34-2411 through 7-34-2418.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(2)(c); amd. Sec. 349, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

Commissioner correction. The bracketed references were repealed, either in part or in whole, by Sec. 407, Ch. 571, L. 1979. THe brackets were added by the Code Commissioner, 1979. This section requires an amendment to provide proper referencing.

7-34-2415. Details of bonds. (1) The bonds may be sold at public or private sale and shall bear interest at a rate or rates not exceeding 10% a year. The bonds may be for a 40-year period.

(2) Except as otherwise provided in 7-34-2411 through 7-34-2418, any bonds issued pursuant to 7-34-2411 through 7-34-2418 by a county shall be payable as to principal and interest solely from revenues of the county and

shall state on their face the applicable limitations or restrictions regarding the source or sources from which such principal and interest are payable.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part).

7-34-2416. Tax-exempt status of bonds. Bonds issued by a county pursuant to the provisions of 7-34-2411 through 7-34-2418 are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part).

7-34-2417. Special tax levy authorized. In the event the bonds become delinquent or cannot be paid from ordinary revenues of the facility, a county which has issued bonds under 7-34-2411 may levy taxes on all taxable property within the county in the manner provided for public hospital districts under 7-34-2133, 7-34-2134, 7-34-2135(1), and 7-34-2136, namely, 3 mills not submitted to a vote of the people and 3 additional mills approved by a vote of the people.

History: En. 16-1046 by Sec. 2, Ch. 511, L. 1975; R.C.M. 1947, 16-1046.

7-34-2418. General tax to support bonds authorized. (1) (a) The governing body of any county may, with respect to bonds issued by the county pursuant to 7-34-2411 through 7-34-2418, by resolution covenant that:

(i) in the event that at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county for the payment of such deficiency; and

(ii) at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the county for the payment of such deficiency.

(b) The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(2) Such taxes shall not be subject to any limitation of rate or amount applicable to other county taxes but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency.

(3) In the event more than one county is included in an authority issuing bonds pursuant to 7-34-2411 through 7-34-2418, the counties may apportion the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for such bonds in such manner as the counties shall determine.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(4).

Part 25

Multicounty Operation of Hospitals and Nursing Homes

7-34-2501. Definitions. As used in this part, the following definitions shall apply:

(1) "Contract" means the agreement entered into by two or more counties for the purpose of creating a joint institution.

(2) "Joint institution" means a county hospital or nursing home for the aged constructed, purchased, leased, equipped, and operated by two or more counties pursuant to the terms of the contract creating it.

History: En. Sec. 1, Ch. 100, L. 1965; R.C.M. 1947, 16-1039.

7-34-2502. Joint institutions authorized. Two or more counties may by contract create a joint institution which will be operated and financed by the contracting counties.

History: En. Sec. 2, Ch. 100, L. 1965; R.C.M. 1947, 16-1040.

7-34-2503. Contract for joint institution. The contract creating the joint institution shall provide:

(1) the total proposed expenditure for the construction, purchase, or lease of the joint institution and the proposed cost of equipping and operating the joint institution;

(2) for the management of the joint institution by a method which will provide that each contracting county shall be represented and have an active part in the management of the joint institution;

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purpose of this part.

History: En. Sec. 3, Ch. 100, L. 1965; R.C.M. 1947, 16-1041(part).

7-34-2504. Division of costs among counties. The total cost of the joint institution shall be divided between the contracting counties in such manner as they shall determine.

History: En. Sec. 3, Ch. 100, L. 1965; R.C.M. 1947, 16-1041(part).

Parts 26 through 40 reserved

Part 41

Municipal Hospital Services

7-34-4101. Detention hospitals. In case of necessity, the city or town council has power to establish, at a suitable place within or without the limits of the city or town, a hospital to prevent the spread of smallpox or other contagious or infectious diseases, to regulate the control thereof, to do all other acts which may be necessary for the promotion of health, and to prevent the spread of infectious or contagious diseases within the city or town.

History: En. Subd. 45, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.44, R.C.M. 1935; R.C.M. 1947, 11-947.

CHAPTER 35

CEMETERY SERVICES

Part 1 — General Provisions Applicable to Local Governments

Section
7-35-101. Joint conduct of cemeteries.

7-35-102. Use of county lands for cemeteries.

Parts 2 through 20 reserved

Part 21 — Cemetery Districts

7-35-2101. Petition to create cemetery district.
7-35-2102. Notice of hearing on creation of district.
7-35-2103. Hearing on creation of district.
7-35-2104. Establishment of boundaries and call for election.
7-35-2105. Territory of cemetery district.
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7-35-2111. Petition for withdrawal of land — hearing.
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7-35-2124. Compliance with state laws.
7-35-2125. Excess expenditures.
Sections 7-35-2126 through 7-35-2130 reserved.
7-35-2131. Establishment and maintenance of permanent care and improvement fund.
7-35-2132. Application for appointment of trustees of fund.
7-35-2133. Appointment of trustees of fund.
7-35-2134. Use of bank as trustee.
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7-35-2146. Administration of permanent care and improvement fund.
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7-35-2148. Disposition of fund income.
7-35-2149. Notice to purchasers of cemetery lots of transfers to fund.
7-35-2150. Annual report — availability.

Part 22 — Cemeteries in Counties

7-35-2201. Power of county commissioners to conduct cemeteries.
7-35-2202. Restrictions on burial not to be affected.

Parts 23 through 40 reserved

Part 41 — Cemeteries in Municipalities

7-35-4101. Power of municipalities to establish and maintain cemeteries.
7-35-4102. Vesting of title to cemetery grounds — restrictions on use.
7-35-4103. What constitutes a cemetery.

7-35-4104. Cemeteries on public lands.
7-35-4105. Layout of cemeteries.
7-35-4106. Inhabitants of municipality to own cemetery.
7-35-4107. Jurisdiction and control of cemeteries.
7-35-4108. Powers of authorities having jurisdiction and control of cemeteries.
7-35-4109. Register must be kept.

Part 1

General Provisions Applicable to Local Governments

7-35-101. Joint conduct of cemeteries. The board of county commissioners of any county within Montana is hereby given jurisdiction and power to establish and conduct cemeteries jointly with any incorporated city or town in such county and jointly with any incorporated city or town, to acquire and conduct cemeteries already established or conducted by any person, firm, or corporation, including municipal corporations.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).

7-35-102. Use of county lands for cemeteries. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a cemetery.

(2) The conveyance is subject to the provisions of 7-8-102.

History: En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

Parts 2 through 20 reserved

Part 21

Cemetery Districts

7-35-2101. Petition to create cemetery district. (1) Whenever a petition is presented to the board of county commissioners of the county in which a proposed district is situated, the board shall by resolution fix a time for the hearing of the petition at a regular or special meeting of said board. The petition shall:

(a) be signed by not less than 20% of the citizens who are owners of land located within a proposed cemetery district and whose names appear as such owners of land upon the last-completed assessment roll of the county in which said proposed district is situated; and

(b) definitely describe the boundaries of the proposed district and request that the territory within said boundaries be organized into a public cemetery district.

(2) The time for the hearing may not be less than 2 or more than 5 weeks from the time of presentation of the petition.

History: En. Sec. 2, Ch. 221, L. 1943; amd. Sec. 2, Ch. 16, L. 1945; R.C.M. 1947, 9-202(part).

7-35-2102. Notice of hearing on creation of district. (1) The board of county commissioners shall cause notice to be given of the time and place of said hearing by publication as prescribed by law for not less than 2 weeks prior to the time of said hearing.

(2) Said notice shall state that any person residing in or owning property within said proposed district or within any existing cemetery district, any part of the territory of which is described in said petition, may appear before said board at the hearing and show cause why the district should not be created or the proposed boundaries changed.

History: En. Sec. 2, Ch. 221, L. 1943; amd. Sec. 2, Ch. 16, L. 1945; R.C.M. 1947, 9-202(part).

7-35-2103. Hearing on creation of district. At the time fixed for said hearing, the board shall determine whether or not it complies with the requirements hereinbefore set forth and whether or not the notice required herein has been published as required and must hear all competent and relevant testimony offered in support of or in opposition thereto. Said hearing may be adjourned from time to time for the determination of said facts, not to exceed 2 weeks in all.

History: En. Sec. 3, Ch. 221, L. 1943; amd. Sec. 3, Ch. 16, L. 1945; R.C.M. 1947, 9-203.

7-35-2104. Establishment of boundaries and call for election. If the board of county commissioners shall determine that the petitioners have complied with the requirements herein set forth and that the required notice has been published, it shall proceed to a final hearing of the matter. Said board shall make such changes in the boundaries of the proposed district as it may deem advisable and shall define and establish such boundaries as described in the petition and shall call an election.

History: En. Sec. 4, Ch. 221, L. 1943; amd. Sec. 4, Ch. 16, L. 1945; R.C.M. 1947, 9-204.

7-35-2105. Territory of cemetery district. A cemetery district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 221, L. 1943; amd. Sec. 1, Ch. 16, L. 1945; R.C.M. 1947, 9-201(part).

7-35-2106. Election details. (1) In its order the board must designate whether a special election shall be held or whether the matter shall be determined at the next general election. If a special election is ordered, the board must in its order specify the time.

(2) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(3) At such election, the ballots must contain the words "Cemetery district — Yes" and "Cemetery district — No".

History: En. Sec. 5, Ch. 221, L. 1943; amd. Sec. 5, Ch. 16, L. 1945; R.C.M. 1947, 9-205; amd. Sec. 350, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-35-2107. Organization of district upon favorable vote. In the event that a majority of the votes cast are in favor of the formation of said cemetery district, the board of county commissioners shall proceed with the organization thereof as specified in this part.

History: En. Sec. 6, Ch. 221, L. 1943; amd. Sec. 6, Ch. 16, L. 1945; R.C.M. 1947, 9-206.

7-35-2108. Government of district by trustees. (1) The cemetery district shall be governed and managed by three trustees appointed by the board of county commissioners. The trustees at their first meeting shall adopt bylaws for the government and management of the district.

(2) The trustees may be appointed from the residents of the district for terms of 1, 2, and 3 years, respectively, and until their successors are appointed and qualified. Annually thereafter the board of county commissioners shall appoint one trustee for a term of 3 years or until his successor is appointed and qualified.

(3) Per diem and mileage of the cemetery trustees may be set by resolution of the board of county commissioners.

History: En. Sec. 7, Ch. 221, L. 1943; amd. Sec. 7, Ch. 16, L. 1945; amd. Sec. 1, Ch. 7, L. 1975; R.C.M. 1947, 9-207; amd. Sec. 3, Ch. 213, L. 1979.

7-35-2109. Powers of district. Said district may:

(1) maintain a cemetery or cemeteries within said district;

(2) hold title to property by grant, gift, devise, lease, or any other method; and

(3) perform all acts necessary or proper for the carrying out of the purposes of 7-35-2101 through 7-35-2125, including the selling or leasing of burial lots.

History: En. Sec. 8, Ch. 221, L. 1943; amd. Sec. 8, Ch. 16, L. 1945; R.C.M. 1947, 9-208.

7-35-2110. Rules. The trustees shall make proper rules for the management of the cemeteries.

History: En. Sec. 10, Ch. 221, L. 1943; amd. Sec. 10, Ch. 16, L. 1945; R.C.M. 1947, 9-210(part).

7-35-2111. Petition for withdrawal of land — hearing. (1) Any portion of a public cemetery district may be withdrawn therefrom as provided in this section, and 7-35-2112 on the grounds that such portion will not be benefited by remaining in said district, upon receipt of a petition signed by:

(a) 50 or more freeholders residing in or owning property within the portion desired to be withdrawn by any public cemetery district; or

(b) a majority of such freeholders if there are less than 100 residing within the portion sought to be withdrawn.

(2) The board of county commissioners shall fix a time for the hearing of such withdrawal petition, which shall not be more than 60 days after the receipt thereof.

History: En. Sec. 11, Ch. 221, L. 1943; amd. Sec. 11, Ch. 16, L. 1945; R.C.M. 1947, 9-211(part).

7-35-2112. Notice of hearing on withdrawal. The board shall, at least 30 days prior to the time so fixed, publish a notice of such hearing for two issues as provided by law.

History: En. Sec. 11, Ch. 221, L. 1943; amd. Sec. 11, Ch. 16, L. 1945; R.C.M. 1947, 9-211(part).

7-35-2113. Hearing on withdrawal. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider all objections, pass upon the merits thereof, and make an order in accordance therewith. This order is subject to review by any court of competent jurisdiction.

History: En. Sec. 12, Ch. 221, L. 1943; amd. Sec. 12, Ch. 16, L. 1945; R.C.M. 1947, 9-212.

7-35-2114. Petition for alteration of district boundaries. The boundaries of any such public cemetery district may be altered and outlying districts may be annexed thereto in the following manner: a petition shall be presented to the board of county commissioners of the county in which said public cemetery district is situated, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public cemetery district and signed by:

(1) 50 or more freeholders within the territory proposed to be annexed; or

(2) a majority of such freeholders if there are less than 100 residing within the portion proposed to be annexed.

History: En. Sec. 13, Ch. 221, L. 1943; amd. Sec. 13, Ch. 16, L. 1945; R.C.M. 1947, 9-213.

7-35-2115. Notice and hearing on alteration of boundaries. (1) At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published according to law for 2 weeks prior to the date to be fixed by said board for the hearing of said petition.

(2) Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any property in said district.

(3) Said board shall have the power, by order entered on its minutes, to grant said petition either in whole or in part and to alter the boundaries of said public cemetery district and to annex thereto all or such portion of said territory described in said petition as will be benefited thereby.

History: En. Secs. 14, 15, Ch. 221, L. 1943; amd. Secs. 14, 15, Ch. 16, L. 1945; R.C.M. 1947, 9-214, 9-215(part).

7-35-2116. Treatment of annexed lands. The annexed territory shall become and be a part of such public cemetery district and shall be taxed, together with the remainder of said district, for all taxes to be thereafter levied by said board of county commissioners for the operation and maintenance of said public cemetery district.

History: En. Sec. 15, Ch. 221, L. 1943; amd. Sec. 15, Ch. 16, L. 1945; R.C.M. 1947, 9-215(part).

7-35-2117 through 7-35-2120 reserved.

7-35-2121. District budget. (1) The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law.

(2) Insofar as the same can be made applicable, the county budget system, part 23 of chapter 6, shall govern the operation of cemetery districts created under this part.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part).

7-35-2122. County tax levy. The board of county commissioners must, annually at the time of levying county taxes, fix and levy upon all property within the cemetery district an amount sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of the district. The tax may not exceed 4 mills on each dollar of taxable valuation on the property of the district.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part); amd. Sec. 13, Ch. 263, L. 1979.

7-35-2123. Disbursement of tax proceeds. The proceeds of taxes collected by the county treasurer for the public cemetery fund shall be disbursed to the various cemetery districts upon the submission of a claim by said cemetery districts to the board of county commissioners for their pro rata share of the proceeds of the taxes collected. Upon approval of said claim by the board of county commissioners, the county clerk shall issue a trust fund warrant drawn upon the public cemetery fund and payable to each claimant.

History: En. Sec. 1, Ch. 94, L. 1951; R.C.M. 1947, 9-209.1.

7-35-2124. Compliance with state laws. The procedure of the collecting of the tax and the distribution of the funds shall be in accordance with the existing laws of the state of Montana.

History: En. Sec. 10, Ch. 221, L. 1943; amd. Sec. 10, Ch. 16, L. 1945; R.C.M. 1947, 9-210(part).

7-35-2125. Excess expenditures. Expenditures made, liabilities incurred, or warrants issued by or in behalf of any cemetery district in excess of the annual budget presented to the board of county commissioners as provided in this part and the amount appropriated for and authorized to be expended for each item in the budget shall not be a liability of the cemetery district.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part).

7-35-2126 through 7-35-2130 reserved.

7-35-2131. Establishment and maintenance of permanent care and improvement fund. Any public cemetery district formed under the provisions of this part which shall have established and be maintaining a cemetery shall provide, in the manner set forth in 7-35-2131 through 7-35-2150, for the establishment and maintenance of a permanent fund, the income of which shall be devoted to the care, maintenance, and improvement of such cemetery. This fund shall be known as the permanent care and improvement fund of such public cemetery district.

History: En. Sec. 1, Ch. 165, L. 1955; R.C.M. 1947, 9-216.

7-35-2132. Application for appointment of trustees of fund. Whenever money to the amount of $100 shall have been received by such public cemetery district heretofore or hereafter formed, either from the sale of lots or from direct payments of such public cemetery district toward such a fund by lot owners, the trustees of such public cemetery district shall immediately make application to the judge of the district court of the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund.

History: En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).

7-35-2133. Appointment of trustees of fund. (1) The district judge shall, upon receipt of the application, appoint a trustee or a board of trustees to administer the fund from a list submitted to him by the trustees of the public cemetery district.

(2) The number of trustees for the fund may not exceed five, with the exact number to be set at the discretion of the trustees of the public cemetery district. Each trustee for the fund must be a resident of the state during the time he exercises the powers of such trust.

(3) Whenever a person, so chosen and appointed, fails to qualify within 30 days after his appointment, a vacancy exists, and the judge of the district court shall appoint from a list submitted to him by the trustees of the public cemetery district some person possessing the above qualifications to fill the vacancy in the board of trustees of the fund. Trustees of the fund appointed by the public cemetery district or district court prior to July 1, 1955, continue to hold office as trustees until terminated as provided in 7-35-2131 through 7-35-2150.

History: En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part); amd. Sec. 4, Ch. 213, L. 1979.

7-35-2134. Use of bank as trustee. The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law to be trustee of such trust fund. In that event the district court shall make appointment of such nominee which shall serve in such capacity without bond but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).

7-35-2135. Term of office for trustees of fund. The tenure of office of the trustee or trustees of such fund shall be for the term of 3 years unless they permanently remove from the state of Montana or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as provided in 7-35-2131 through 7-35-2150.

History: En. Sec. 3, Ch. 165, L. 1955; R.C.M. 1947, 9-218.

7-35-2136. Vacancies. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund, the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 5, Ch. 165, L. 1955; R.C.M. 1947, 9-220.

7-35-2137. Compensation of trustees of fund. (1) The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the public cemetery district on the other provided that the total compensation of such trustee or of the entire board of trustees shall in no case exceed the sum of $100 per annum.

(2) The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the public cemetery district until such trust fund shall reach $10,000, and thereafter the same shall be paid out of the income of such fund.

History: **En. Sec. 13, Ch. 165, L. 1955; R.C.M. 1947, 9-228.**

7-35-2138. Secretary for trustees of fund. The secretary of the public cemetery district shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: **En. Sec. 14, Ch. 165, L. 1955; R.C.M. 1947, 9-229.**

7-35-2139. Bond requirements for trustees of fund. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the public cemetery district for which the trust is maintained a bond in a sum equaling at least 1 ⅓ times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July 1 of the next even-numbered year after the year in which such bond shall be given and until such trustee shall give a new bond as hereinafter provided.

(2) On July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided.

(3) Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists or some part thereof shall be situated and shall be filed with the clerk of the district court of the county in which such cemetery is located.

History: **En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part).**

7-35-2140. Effect of failure to renew bond. Any failure to renew bonds within 30 days after the time hereinbefore provided shall be a sufficient ground for the removal of any trustee within the discretion of the district court.

History: **En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part).**

7-35-2141. Reduction of bond by deposit of money and securities. (1) For the purpose of fixing the amount of the bond, the value of the property on hand may be reduced in an amount equal to the value of the money, bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as hereinafter provided.

(2) The trustee or trustees of such fund may deposit for safekeeping such money, bonds, and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated. It is the duty of the county treasurer to receive and safely keep all such money, bonds, and securities or any part thereof and pay them out or deliver them

up upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district and not otherwise, and to keep an account with such trustee or trustees of all such transactions. For the safekeeping and payment and delivery of all such money, bonds, and securities as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part).

7-35-2142. Effect of failure of district to make application for trustees or of disability of all members of board of trustees of fund. (1) In the case of the failure of the trustees of such public cemetery district to make application to the judge of said district court for the appointment of a board of trustees of such fund as provided in 7-35-2132 or in the case of the death, removal, resignation, or disability of all the members of such board, the said rights, titles, interests, authorities, powers, franchises, and trusts of such fund shall vest in the district court of the county in which such cemetery or the greater part thereof shall be situated until the appointment and qualification of a new board of trustees. In such cases, such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order.

(2) The trustee or trustees appointed by the judge of said court under the provisions of this section shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under 7-35-2131 through 7-35-2150. Such trustee or such board of trustees must annually, or more often if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated a duly verified account showing a detailed statement of all money collected and of all securities on hand, together with all money disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time.

(3) Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the public cemetery district, and any trustee of the said trust fund shall have the right to make any application to the court provided for in 7-35-2131 through 7-35-2150.

History: En. Sec. 7, Ch. 165, L. 1955; R.C.M. 1947, 9-222.

7-35-2143. Recording of instruments of appointment of trustees of fund. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the public cemetery district establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such public cemetery district is located.

History: En. Sec. 8, Ch. 165, L. 1955; R.C.M. 1947, 9-223.

7-35-2144. Vesting of funds in trustees. Upon the election, appointment, and qualification, as provided in this part, of the trustees of such fund, all of the title to the funds included in said trust and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining shall at once vest in him or them. In case of the failure of any of those so chosen and appointed to qualify within 30 days after their appointment, then the same shall vest in the one or more who shall qualify.

History: **En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).**

7-35-2145. Vesting of powers and duties in new trustees. In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever existing in such trustee at the time of such death, resignation, disability, or removal shall at once, without further act or conveyance, vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted. All newly appointed trustees shall at once, upon qualification, succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board; and the same shall always be vested in the members of such board as actually constituted.

History: **En. Sec. 6, Ch. 165, L. 1955; R.C.M. 1947, 9-221.**

7-35-2146. Administration of permanent care and improvement fund. (1) From and after March 4, 1955, the trustees of such cemetery district as are mentioned in 7-35-2132 shall provide, by resolution spread upon the minutes of such public cemetery district, for the transfer to the trustees of such permanent care and improvement fund of not less than 15% or more than 40% of the money received from the sale of cemetery lots designated as perpetual care lots by said public cemetery district, together with all money theretofore or thereafter received from the owners of lots for the care of such lots. Such transfer of any such funds then on hand shall then and there be made. Such transfers shall be made thereafter quarterly, upon the first day of January, April, July, and October of each year, to the trustees of such fund.

(2) If at any time there shall remain in the hands of such public cemetery district unexpended money over and above the liabilities of the public cemetery district, the board of trustees of such public cemetery district may by a two-thirds vote appropriate the whole or any portion of such unexpended money to such permanent care and improvement fund, provided that such fund (exclusive of such portion thereof as may have been paid in by owners of lots for the care of such lots) shall never in any case be allowed to exceed the sum of $5,000 per acre of the cemetery to be cared for therewith, and when such fund shall reach such amount, all appropriations and payments thereto shall cease.

History: **En. Sec. 9, Ch. 165, L. 1955; R.C.M. 1947, 9-224.**

7-35-2147. Financial management of fund. (1) The principal of such fund shall in all cases remain intact and inviolate.

(2) The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in Montana and not otherwise, provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the public cemetery district.

(3) The trustees of such fund shall, on January 1 and July 1 in each year, turn over to the treasurer of such public cemetery district all accrued income

arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: (1), (3)En. Sec. 10, Ch. 165, L. 1955; Sec. 9-225, R.C.M. 1947; (2)En. Sec. 12, Ch. 165, L. 1955; amd. Sec. 6, Ch. 98, L. 1974; Sec. 9-227, R.C.M. 1947; R.C.M. 1947, 9-225, 9-227.

7-35-2148. Disposition of fund income. (1) The income of that portion of such fund received from the sale of lots designated as perpetual care lots shall be used, in the discretion of the trustees of such public cemetery district, solely for the care, maintenance, and improvement of such cemetery lots and its grounds, roads, walks, and avenues leading thereto, except as herein provided. The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively.

(2) In the event of any portion of the income so paid ever remaining unexpended for such purposes for 1 year after its being so paid over to the treasurer of such public cemetery district, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal.

History: En. Sec. 11, Ch. 165, L. 1955; R.C.M. 1947, 9-226(part).

7-35-2149. Notice to purchasers of cemetery lots of transfers to fund. After July 1, 1955, all public cemetery districts shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor to be transferred under the provisions of 7-35-2131 through 7-35-2150 to the permanent care and improvement fund of such public cemetery district and also such further sum, if there be any, paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed to be transferred as hereinbefore provided.

History: En. Sec. 11, Ch. 165, L. 1955; R.C.M. 1947, 9-226(part).

7-35-2150. Annual report — availability. The trustee or the board of trustees of such fund shall annually on January 1 make its report of the condition of such trust fund to the trustees of the public cemetery district as hereinbefore provided. Such reports shall always be kept by the secretary of such public cemetery district and by the clerk of the district court and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 15, Ch. 165, L. 1955; R.C.M. 1947, 9-230.

Part 22

Cemeteries in Counties

7-35-2201. Power of county commissioners to conduct cemeteries. The board of county commissioners of any county within Montana is hereby given jurisdiction and power to:

(1) establish and conduct cemeteries;

(2) acquire lands for said purpose by purchase, condemnation, gift, or devise; and

(3) acquire by purchase, condemnation, gift, or devise cemeteries already established and conducted by persons, firms, or corporations, including municipal corporations.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).

7-35-2202. Restrictions on burial not to be affected. Nothing contained in 7-35-101 or 7-35-2201 will permit the interment of bodies of deceased persons in any such cemetery condemned and taken over under authority of 7-35-2201 as are debarred from burial therein under the articles of incorporation or bylaws of such cemetery association or corporation.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).

Parts 23 through 40 reserved

Part 41

Cemeteries in Municipalities

7-35-4101. Power of municipalities to establish and maintain cemeteries. The city or town council has power to establish and regulate cemeteries within or without the city or town and acquire lands for this purpose and to prohibit the establishment of cemeteries within 3 miles of the city or town.

History: En. Subd. 46, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.45, R.C.M. 1935; R.C.M. 1947, 11-948.

7-35-4102. Vesting of title to cemetery grounds — restrictions on use. The title to lands used as a public cemetery or graveyard, situated in or near to any city, town, or village and used by the inhabitants thereof as a burial-ground continuously without interruption for 5 years, is vested in the inhabitants of such city, town, or village. The lands must not be used for any other purpose than a public cemetery, except that the bodies interred therein may be removed and no other interred therein upon the order of the board of county commissioners, city council, or other body having authority when it appears that the public health is endangered or for any other good cause, but a new cemetery must be purchased and laid out by proper authority and such bodies removed and interred therein, and the old cemetery may be sold and the proceeds applied to the purchase of the new cemetery.

History: En. Sec. 2880, Pol. C. 1895; re-en. Sec. 1988, Rev. C. 1907; re-en. Sec. 5168, R.C.M. 1921; Cal. Pol. C. Sec. 3105; re-en. Sec. 5168, R.C.M. 1935; R.C.M. 1947, 9-301.

7-35-4103. What constitutes a cemetery. Six or more human bodies buried at one place constitutes the place a cemetery.

History: En. Sec. 2881, Pol. C. 1895; re-en. Sec. 1989, Rev. C. 1907; re-en. Sec. 5169, R.C.M. 1921; Cal. Pol. C. Sec. 3106; re-en. Sec. 5169, R.C.M. 1935; R.C.M. 1947, 9-302.

7-35-4104. Cemeteries on public lands. Incorporated cities or towns and, for unincorporated towns or villages, the board of county commissioners of the county may survey, lay out, and dedicate a portion of the public lands situated in or near the city, town, or village, not exceeding 5 acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order constituting the land as a cemetery, must be recorded in the office of the county clerk of the county in which the land is located.

History: En. Sec. 2882, Pol. C. 1895; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 5170, R.C.M. 1921; Cal. Pol. C. Sec. 3107; re-en. Sec. 5170, R.C.M. 1935; R.C.M. 1947, 9-303; amd. Sec. 14, Ch. 263, L. 1979.

7-35-4105. Layout of cemeteries. The public cemeteries of cities, towns, villages, or neighborhoods must be enclosed and laid off into lots.

History: En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907; re-en. Sec. 5172, R.C.M. 1921; Cal. Pol. C. Sec. 3109; re-en. Sec. 5172, R.C.M. 1935; R.C.M. 1947, 9-305(part).

7-35-4106. Inhabitants of municipality to own cemetery. The inhabitants of any city, town, village, or neighborhood may, by subscription or otherwise, purchase or receive by gift or donation lands not exceeding 160 acres to be used as a cemetery, the title thereof to be vested in such inhabitants, and when once dedicated for use for burial purposes, the lands must thereafter be used for no other purpose except as provided in 7-35-4102.

History: En. Sec. 2883, Pol. C. 1895; re-en. Sec. 1991, Rev. C. 1907; re-en. Sec. 5171, R.C.M. 1921; Cal. Pol. C. Sec. 3108; re-en. Sec. 5171, R.C.M. 1935; R.C.M. 1947, 9-304.

7-35-4107. Jurisdiction and control of cemeteries. The general management, conduct, and regulation of interments, permits to inter or remove interred bodies, and the disposition of lots, keeping the same in order, are under the jurisdiction and control of:

(1) the cities and towns owning the same if incorporated; or

(2) the board of county commissioners of the county in which they are situated, if not incorporated.

History: En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907; re-en. Sec. 5172, R.C.M. 1921; Cal. Pol. C. Sec. 3109; re-en. Sec. 5172, R.C.M. 1935; R.C.M. 1947, 9-305(part).

7-35-4108. Powers of authorities having jurisdiction and control of cemeteries. The board of county commissioners, city trustees, or other corresponding authorities having jurisdiction and control of cemeteries may make general rules therefor and appoint sextons and other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary, including the right to raise money by taxation, purchase land, and lay out cemeteries, and manage them.

History: En. Sec. 2885, Pol. C. 1895; re-en. Sec. 1993, Rev. C. 1907; re-en. Sec. 5173, R.C.M. 1921; re-en. Sec. 5173, R.C.M. 1935; R.C.M. 1947, 9-306.

7-35-4109. Register must be kept. The authority having the control of a public or private cemetery must require a register of name, age, birthplace, and date of death and burial of every body interred therein, to be kept by the sexton or other officer, open to public inspection.

History: En. Sec. 2886, Pol. C. 1895; re-en. Sec. 1994, Rev. C. 1907; re-en. Sec. 5174, R.C.M. 1921; re-en. Sec. 5175, R.C.M. 1935; R.C.M. 1947, 9-307.

TITLES 8 AND 9

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